



THE ARMY LAWYER

D A PAMPHLET 27-50-11 HEADQUARTERS, DEPARTMENT OF THE ARMY, WASHINGTON, D. C.

Initiatives To Reaffirm And Develop International Humanitarian Law For Armed Conflict

This article is taken from an address by Major General George S. Prugh, The Judge Advocate General, speaking on behalf of the Department of Defense before the Subcommittee on International Organizations and Movements of the House Committee on Foreign Affairs, September 20, 1973.

Certain issues will come before this February's Diplomatic Conference called by the Government of Switzerland for the purpose of supplementing the Geneva Conventions of 1949 for the protection of war victims. The opportunity to discuss these prospects for updating international law applicable in armed conflict is a welcomed one. The Department of Defense, in conjunction with the Department of State, has actively supported the initiatives of the International Committee of the Red Cross to reaffirm and develop international law applicable in armed conflict. The Department is thoroughly committed to do everything in its power to strengthen in every possible way the law which governs the conduct of hostilities and to accelerate to the extent possible the amelioration of conditions under which armed struggle takes place. The Department representatives supported the resolution of the XXI International Conference of the Red Cross at Istanbul in 1969 which requested the International Committee of the Red Cross to prepare concrete proposals which would supplement (but not replace) existing international humanitarian law. In conjunction with the Department of State, representatives of the Department of Defense participated actively in the preparatory conferences of government experts which assisted the International Committee of the Red Cross in the preparation

of the additional final Protocols. I was one of these experts. These proposals will be the basis for discussion at the Diplomatic Conference called by the Swiss Government. We have submitted many carefully drafted expert views to the International Committee of the Red Cross and, I am happy to say, at least some of the progress that has been made in this complex and controversial field of negotiation has been in part due to our contributions.

Many additional weeks of work will be necessary before we will have been able to complete a review of the latest draft protocols, prepared and recently distributed by the Red Cross, and develop and coordinate the United States' positions on these instruments.

I would like to tell you of our purposes and objectives and why we are so involved and concerned. We want, of course, to mitigate the terrible scourge of war; to protect noncombatants to the fullest extent possible. We want to improve the lot of prisoners of war, provide for the free movement of relief supplies, reduce damage to civilian property and better the lot of combatants. This list is long.

I can assure you that, based on past experience, our orientation will be positive. The law of war has been developed by military men who recognize that violence and destruction which is superfluous to actual military necessity is not only immoral, but also counterproductive to the attainment of the political objectives of the use of military force. The rule of proportionality, which holds that loss of life and damage to property must not be out of proportion to the military advan-

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The Army Lawyer is published monthly by The Judge Advocate General's School. By-lined articles represent the opinions of the authors and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army. Manuscripts on topics of interest to military lawyers are invited to: Editor, The Army Lawyer, The Judge Advocate General's School, Charlottesville, Virginia 22901. Manuscripts will be returned only upon specific request. No compensation can be paid to authors for articles published. Funds for printing this publication were approved by Headquarters, Department of the Army, 26 May 1971.

tage to be gained, is closely related to one of the classic principles of war: Economy of force. From the beginning of our history as a nation we have developed and respected the principle of humanity in limiting and mitigating the sufferings occasioned by war.

Our treaty of Amity and Commerce with Prussia of 1785 provided for the humane treatment of prisoners of war in the event of war between the contracting powers, thus setting a precedent for future codes. It was this treaty which provided the precedent used by Dr. Francis Lieber in the Prisoner of War provisions of his monumental General Orders No. 100, "Instructions for the Government of the Armies of the United States in the Field." General Orders No. 100 was the first codification of the law of war. J.M. Spaight, the distinguished British Commentator on *War Rights on Land* described it as "not only the first but the best book of regulations on the subject ever issued by an individual nation on its own initiative." It formed the basis of the Hague Convention IV of 1907, the latest international convention comprehensively regulating the conduct of hostilities. (The 1949 Geneva Conventions are limited generally to the protection of the victims of war, the wounded, sick and shipwrecked, prisoners of war, and civilians in the hands of an enemy power).

It is inevitable that the laws of war are based on past experience. The drafters of the Hague Conventions of 1907 looked back on the wars of the 19th Century and the Russo-Japanese War of 1905. The 1929 Geneva Conventions were considered in the context of World War I; and the 1949 Geneva Conventions dealt with issues that arose in World War II. It is not surprising that these rules were not adequate to provide for all of the problems which arose in the armed conflicts of Southeast Asia, Southern Asia, Africa and the Middle East.

As soldiers we value the principles of the humanitarian rule of law highly. We have benefited from the amelioration the law of war affords to human suffering. Even though

these principles may have been imperfectly applied, many of us are alive only because of the humanitarian restraint of the law of war. Enemy prisoners of war have benefited even more from our observance of the law of war. Our own interest motivates our thoughtful participation in the effort to provide more effective protection of war victims through the development of improved norms of international law.

These apparently simple and straightforward humanitarian objectives, however, are difficult to obtain. They cannot be achieved by drafting protocols that will not stand up to the test of the battlefield. They cannot derive from conventions that few nations will sign, fewer ratify, and fewer still adhere to. The articles must be designed and negotiated with the utmost care, and operational personnel and specialists from many disciplines must be involved in their development.

Among the tests that we try to give new law of war proposals are those of feasibility and clarity. We ask the question, "Is it reasonable to expect that a commander in a desperate struggle in the field will comply with this proposal?" Would, for example, a platoon leader, under intense casualty-producing fire and seeing his own men fall and his mission in jeopardy, refrain from returning that fire because he might damage installations needed to support the civil population? Would a rule of international law change this outlook? We believe that a rigorous test of feasibility is the key to whether such laws as are developed will endure and will affect the course of future conflict, or whether utopian and illogical constraints will be introduced which will quickly collapse under the hard test of combat. Simply put, we must test for reasonable likelihood that the wisdom of the law will be apparent to most, and that it can and will be respected by the great majority even in the difficult life-and-death circumstances we can expect in armed conflict. If the laws are simply utopian hopes and impractical restraints, these new protocols would not only be useless, they would be detrimental, for they would lead to a weakening of the already ex-

isting body of law that has been so painfully constructed over the years.

Clarity is almost as important. It is essential that the laws which eventually ensue from our deliberations be comprehensible to national decision makers, senior officers, junior officers, noncommissioned officers and to newly enlisted personnel. They must be clear enough so that they can be understood and interpreted and remembered in the field by men who are under high stress and who will often be unable to obtain advice from legal experts when critical decisions must be made.

Blending the Hague Rules and the Geneva Conventions in one instrument has caused concern to some experts including our own. The Geneva Conventions are entirely humanitarian in scope. They are designed to aid the victims of war in the hands of their enemy. In concept their implementation is capable of supervision by a protecting power or a substitute organization like the impartial and apolitical International Committee of the Red Cross. The Hague Regulations also covered these areas until, to this extent, they were superseded by the Geneva Conventions. The unsuperseded portions deal with the methods and means of war, and the protection of civilians behind the enemy's lines. With respect to this aspect of the law of war, outside supervision is neither traditional nor easy to visualize.

I would like to comment briefly on some of the areas of concern noted for discussion by the Department of Defense before this Committee. The first was the application of the laws of war to guerrilla warfare and to internal conflicts in general. There has been wide diversity in the national views on the proposals for extending protection to participants and victims of internal armed conflict. The resolution of these competing views will be difficult.

With respect to internal armed conflict, we believe that important advances in international protection of the victims of non-international conflicts can be made. These include making explicit the general principles

for humane treatment in Article 3 common to the 1949 Geneva Conventions. These might include specific rules for the protection of women and children, medical personnel, and all persons captured and detained, as well as better provisions for the passage of food and relief to persons not taking part in the conflict. Beyond humanitarian protection of the victims of internal armed conflict, however, we found that most governments are reluctant to provide any recognition, expressly or by implication, of any legal status for insurgents. Some delegations, on the other hand, were anxious to provide prisoner of war protection to those groups struggling for self determination against colonial or foreign domination. These, they view, as international armed conflicts which should be governed by the full range of the law of war, but it is not always clear that their governments are willing to extend the same protection to their opponents.

With respect to guerrillas—or irregular combatants—in an international armed conflict, it has been the view of the Department of Defense that organized irregular forces should be accorded prisoner of war status when captured in combat, but that they must conform to certain minimum requirements to receive this status. These would ensure that such personnel be distinguishable from the civilian population during the conduct of military operations, have some recognizable system of command, and accept the requirement to conform to existing laws of war. In practice, U.S. Armed Forces have been liberal in extending POW status to guerrillas captured in Indochina and, in fact, the Red Cross noted that U.S. practice here exceeded the requirements of the Geneva Conventions.

Another area where comment was requested involves restrictions on air warfare affecting civilian population. The U.S. has consistently maintained the position that attacks against civilians as such, not just from the air but by any means, must not be carried out. Intentionally terrorizing civilian noncombatants should be forbidden regardless whether it is done from the air, by ground attack or

by any other violent undertaking. We consider that it is not the specific means of conducting the attack nor the delivery means used, but the objective of the attack, and how and where it took place, that is the important element in determining the legitimacy of the action. Thus, we would prohibit a deliberate aerial bombardment of a city containing no military targets and we would equally oppose deliberate rocket attacks on urban population centers.

The question of weapons which could cause unnecessary suffering is a complex issue with many ramifications. All weapons, from bayonets to bombs cause suffering. The real issue is whether they are used to cause *unnecessary* suffering. Our position has been that the best approach is to prohibit the use of weapons in a manner to cause unnecessary suffering. The standard of the Hague Regulations is to measure the suffering which weapons cause against military necessity. If it is necessary for the accomplishment of a proper military purpose to employ a particular weapon, it cannot be said that the suffering caused by that weapon is unnecessary. The singling out of particular weapons for prohibition is essentially a complicated arms control matter, which could seriously affect military power relationships. The ICRC, recognizing the political and technical basis of this issue, has approached it with prudent reticence. It has been our position that this consideration can best be done in arms control forums where the prohibition of one entire class of weaponry, biological weapons, has already been negotiated. We would, in particular, urge that weapons issues not be allowed to slow or halt progress on other important aspects of the laws of war, which we may otherwise be able to negotiate into treaty form in two or three years.

With respect to distinguishing between military targets and civilian objects, we are guided by the principle that the civilian population as such must never be the object of attack. The same principle applies to objects used only by the civilian population. Conversely, objects intended exclusively for the

enemy's armed forces, including food and crops, are legitimate targets under existing law.

The problem in armed conflict is how to treat the enemy's infra-structure which supports both his war effort and the civilian population. Here the present rule provided in the Hague Regulations is that it is forbidden to destroy or seize the enemy's property, unless such destruction is imperatively demanded by the necessities of war. The interdependence of a modern nation's industrial base with its war effort make the solution of the problem a very difficult one. It requires the application of the rule that the destruction occasioned must not be disproportionate to the military advantage gained. We are giving our best efforts to the formulation of realistic rules.

We believe there are excellent prospects for making progress in a number of other important areas. Our highest priority extends to more effective implementation of the existing rules and those which are developed. If states will not comply with the almost universally binding Geneva Conventions of 1949, it will be of little value to negotiate new conventions only to have them disregarded.

The effective application of the Geneva Conventions is dependent on supervision by protecting powers. It is the failure of these provisions in the 1949 Geneva Convention of Prisoners of War that has resulted in the mistreatment and suffering of POW's and other victims of war and permitted them to be exploited for political purposes.

A central weakness of the Conventions is that they assume the parties will accept protecting powers; they do not provide a mechanism which insures the appointment of either a protecting power or a substitute for a protecting power. Moreover, the ICRC, whose traditional humanitarian functions are recognized by the Conventions, is given no treaty right to operate on the territory of a party unless that party decides to authorize such operations. Various proposals are being studied to remedy this weakness. One proposal

seeks to provide a mechanism facilitating appointment of a protecting power within a specified time. If the procedure fails, then the ICRC or other impartial humanitarian organization automatically would be permitted to perform that function as a substitute. The basic aim of these proposals is to make it more likely that there will in fact be some external observations of compliance.

We also support measures intended to provide more awareness of international norms on the part of all levels engaged in armed conflict. This includes increased emphasis on training in the law of war in the armed forces and in programs of instructions for the civilian population, and we support international law recognition of the role of the military lawyer as an adviser to commanders.

In the Conferences of Government Experts substantial progress was made in developing concrete texts for improved protection of the sick, wounded and shipwrecked. A major initiative by U.S. experts resulted in consensus on texts for the development of a new regime for improved identification of medical aircraft and substantial progress toward the formulation of new rules for their protection with particular emphasis on battlefield evacuation.

The issues to be addressed in the forthcoming conference are complex. It is clear that certain improvements in the law applicable to armed conflict are called for, especially now that 20 years of experience in such areas as India, Pakistan, Indo-China, Korea, the Middle East, the Congo, and Nigeria has provided us with additional insight into the problems. In searching for improvements, where the balance of interests in armed conflict is so delicate and opinions run so strongly, there is a real risk that some provisions of international law regarded as advances would actually be setbacks. What is needed is a strengthening of the spirit that underlies the Hague and Geneva rules. What must be avoided is the development of unrealistic rules which would create only the illusion of protection. These would collapse when tested

and hasten the erosion and disregard of the Hague and Geneva rules. We are, however, optimistic and committed to these important

negotiations. Certainly, the time is opportune. The humanitarian goals before us make our efforts worthwhile.

Crime Victims' Compensation: Fair Play for the Good Guy

By: Captain Robert J. Dull, JAGC, Fort Ord, California and Ms. Myra Werrin, Emory University School of Law

Captain Dull served as an interim duty officer, and Ms. Werrin was a summer intern, in the Civil Law Division, TJAGSA. A related analysis of Army theft claims can be found within the Claims section of this issue of *The Army Lawyer*.

Introduction

With another political season fast approaching it seems safe to predict that law and order will again receive considerable attention from the nation's soap boxes. Crime, like sin, is something almost everyone is against. Few political word pictures have greater emotional content than the housewife sexually assaulted in her apartment or the pensioner robbed of his monthly income on the streets. Yet despite the legitimacy of their complaint, society seems more eager to cry over crime victims than to reimburse them. However, recent events suggest that compensation for crime victims may be an idea whose time has come.

Ample precedent exists for a scheme of distributing societal hazards to all. Workmen's Compensation, social security and unemployment insurance all recognize that life's hazards are impossible to provide for and predict. Such compensation schemes were inspired by a recognition that traditional legal remedies were often inadequate. Citizens are more confident knowing that they will not be left destitute by some of the physical and economic vagaries of society.

The average victim of a crime against personal property shares many of the characteristics of the disabled or unemployed. His or her only fault was to be in the wrong place at the wrong time. While punishing the crimi-

nal may be commendable, it does not bind the victim's wounds nor refill his pocketbook. A civil suit against the criminal is, of course, possible but few murderers or muggers have large bank accounts. The choice has become quite clear: either recompense the victim out of public funds or force him to bear the burden of physical injury and wage and property loss alone.

Crime is a serious concern to the military as it is to the civilian community. Not surprisingly, given military pride in "taking care of our own" the military has been attentive to the need for protection of its members against physical and property losses of crime. As in other legal areas both the civilian and military world can learn from the other's experiences in protecting the crime victim.

State Compensation Approaches

Approximately 10 states authorize the payment of state funds to compensate crime victims. Most laws are new and other state legislatures are considering victim compensation bills. In some cases, state relief is limited to recovery for injuries sustained by a peace officer or citizen in the detection of a crime, in the apprehension of one accused of a public offense, or in the resistance to arrest by a criminal suspect.¹ These account for a very small portion of the crimes committed in the United States; injuries resulting from these crimes are yet a smaller portion of the injuries sustained by innocent victims of all crimes. This statutory pattern represents only a small number of the acts which have thus far been passed. A larger scope of recovery is more common.²

New York passed the Crime Victims Compensation Act in 1966.⁸ In addition to being the first state legislation, the New York Act provides for the largest pecuniary relief for the greatest number of violent crimes. The Act has been the model for much of the subsequent legislation passed by other states and will be examined closely.

Under the New York Act, the victim need only fall into one of three categories to be eligible for relief: (a) the injured victim; (b) a surviving spouse, parent or child of a victim of a crime who died as direct result of such crime, and (c) any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime. A person who is criminally responsible for the crime upon which a claim is based, an accomplice, or a family member of such a person shall not be eligible to receive an award. There is no limitation as to the type of crime covered by the Act, only that it be a crime under the New York State penal code with the exception that no act involving the operation of a motor vehicle which results in injury shall constitute crime for the purposes of compensation unless the injuries were intentionally inflicted through the use of the vehicle.

An individual files a claim with the Office of the Secretary of the Crime Victim Compensation Board within 90 days after the occurrence of the crime upon which the claim is based, or in the case of death of the victim, not later than 90 days from the date of death. To be eligible for an award, the injured party must prove he has suffered at least \$100 in unreimbursed and unreimbursable expenses reasonably incurred from medical care or other services necessary as a result of the injury or that he has lost at least two continuous weeks earnings or support.

The injured party must sustain the following burden of proof: (1) that a crime was committed in New York State, (2) that such crime directly resulted in *personal physical injury* to or death of the victim, and (3) that police records show that such crime was prop-

erly reported to the authorities. Point three above is extremely important. No award may be made where the police records show a report was made more than forty-eight hours after the occurrence of the crime unless good cause is shown. A determination is made by a single board member. An adverse decision may be reviewed by the three-member board which may either affirm or modify the original determination.

The final decision of the board may be reviewed by the Attorney General and filed for a court determination where the Attorney General has found the judgment to be improper or excessive. This appears to be the only form of judicial review allowed in the procedure and is available only to the Government and not to the individual claimant.

The award is limited to an amount not exceeding the out-of-pocket expenses and the loss of earnings or support resulting from such injury. However, no award for loss of earnings or support shall exceed \$100 for each week of lost earnings or support; the aggregate award is not to exceed \$15,000. The greatest limitation on the amount of the award is its reduction by the amount of any payments received by the claimant as a result of the injury under any contract of insurance wherein the claimant is the insured or the beneficiary. This provision effectively excludes most individuals who have adequate or semi-adequate insurance coverage under a health and accident policy.

Two other criteria considered by the board are worthy of note. The first determination must indicate whether the victim of a crime contributed to the infliction of his injury and whether the infliction of such injury should result in a reduction or a rejection of the claim. However, where responsibility was attributable to the efforts by the victim to prevent a crime from occurring in his presence or to apprehend a person who had committed a crime in his presence, relief ought not be denied. Secondly, where the board finds the claimant will not suffer financial hardship as a result of the injury, the recovery should

be denied. All of the natural resources of the claimant are used in determining the serious financial hardship requirement.

Three methods of payment are available under the New York Compensation Act. If it appears that a claim is one which may merit an award and undue hardship will result to the claimant if immediate payment is not made, the board may make an emergency award of up to \$500 pending a final decision in the case. In the event of either death or protracted disability, the award shall provide for periodic payments to compensate for loss of earnings or support in the form of an annuity. A lump sum payment will be made in most instances at the conclusion of the board's determination and the appellate process.

Proposed Federal Legislation

In October of this year the United States Senate passed a bill relating to "Federal Compensation for Victims of Violent Crime,"⁴ its third attempt in this area in recent years. The bill would amend HR 7352, a measure relating to federal prison furloughs, which adds to the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 101. While the bill has been referred to the House Judiciary Committee and is still pending, comment on it is pertinent. The award determinations are very similar to the New York Act and comments above will be pertinent to it. Therefore, the bill will not be discussed in detail. The bill, if passed, would establish a compensation program in the District of Columbia and certain other federal areas. While the minimum requirements of \$100 out-of-pocket expenses are the same as the New York Act, the maximum allowable award is \$50,000 as against the New York Act and most state acts. Should the bill become law it would encourage other states to enact similar legislation, as well as provide the uniformity of legislation under the guidelines of the Federal Act.

Military Coverage

Unlike the state and Federal action, no particularized concern prompted the military's

protection of its members against the deprivations of crime. Nonetheless, through a variety of statutory and regulatory measures the serviceman has long been provided with many of the benefits only recently accruing to the private citizen.

As is well known, the military provides medical care free of charge to its members.⁵ That a member's injury is due to his being a crime victim does not alter medical care. Equally important to recovery is the member's retention on a full-pay status for the period of limited convalescence. Should a permanent disability result from criminal acts against him, the soldier would be entitled to the same benefits as though he had been wounded in combat. Were our soldier to lose his life as the victim of a violent crime, his dependents would receive the same benefits (death gratuity, survivor benefit plan, serviceman's life insurance) as any bereaved military family.

One significant exception in most of the above statements would involve the soldier injured due to his own willful or grossly negligent misconduct.⁶ The familiar "line of duty" report would determine these relatively rare instances. Absent, however, the serviceman-victim being AWOL or a criminal participant himself, he would be entitled to the full benefits discussed.

The serviceman's dependents may also benefit from government medical care should they suffer criminally caused injuries.⁷ Their statutory eligibility remains the same whether the cause of their injury is a household fall or a robber's weapon. However, loss of wages due to time incapacitated would not be recoverable except in states where a crime victim act has been enacted.

A separate statute, the Military Personnel and Civilian Employees' Claims Act of 1964 (78 Stat. 767, 31 U.S.C. §§ 240-43, as amended by P.L. 91-311, 8 July 1970), also provides significant gratuitous protection for the serviceman's personal property. The statute is the same one that provides the mili-

tary authority to compensate for the shattered crystal and scratched furniture that seemingly accompany every PCS move. In the robbery and theft areas eligibility for compensation is more closely defined. Nonetheless, probably hundreds of eligible servicemen are not compensated for criminal losses simply because they are unaware of their rights. In broad language the statute compensates the serviceman for damage to or loss of personal property sustained incident to services. Critical to the determination are considerations of circumstances, location and amount. In general the serviceman's protection will end when he leaves the confines of a military installation. The significant exception involves theft from quarters outside the United States.⁸

Specifically what losses are covered? Theft losses from government assigned quarters in the United States are recoverable. Also protected are losses from TDY quarters whether they be the post BOQ or the local motel. Also covered are losses from any "place authorized or apparently authorized for the reception or storage of property."⁹ This might include the locker at the post gym or a desk drawer at the office. The same protections that extend to the serviceman's home extend to his place of work whether it be aboard ship, on the rifle range or at a desk in the Pentagon. Overseas, the Government will pay for theft losses wherever the serviceman is living. The serviceman's coverage would pay for the theft of or major malicious damage to his automobile when the car is on post, at assigned quarters or properly under military control.

The serviceman can also be recompensed for robbery losses on post. As a condition to recovery he must show he promptly reported the incident to the appropriate authorities, that he was not guilty of negligence or misconduct, and was not carrying an inappropriately large sum of money with him. Fraudulent theft or conversion of money given to a person apparently authorized to receive funds is also compensable. Finally, property loss or damage due to efforts to preserve life

or protect government property, regardless of location, may be paid.

As with the more familiar moving company claims, a variety of regulatory provisions limit the government's responsibility. Contributory negligence by the serviceman may bar a recovery. The claimant's possession of property lost must be shown to have been "reasonable, useful and proper" under the circumstances.¹⁰ Examples best illustrate the rule. The government won't pay for the theft of the General's priceless Ming vase.¹¹ Nor would it be appropriate for the basic trainee to have 25 transistor radios in his wall locker. Private insurance rather than Uncle Sam's generosity must be looked to. Further, depreciation value and maximum item amounts may lower the soldier's recovery below the cost of a new item. In general, however, the Military Personnel and Civilian Employee Claims Act does protect the soldier against many of the crimes against property to which he may be exposed.

Societal recognition of innocent criminal victims as an injured class entitled to public compensation is essential where traditional legal remedies are inadequate. Shock and compassion are feeble substitutes for the price of medical treatment and lost pay checks. The New York legislature has chosen to limit its relief to medical expenses and lost wages. No provision protects an individual who suffers a theft loss without receiving physical injuries. The military has not isolated crime victims and specifically reimbursed specific losses. Rather, relying on the statutory directive to provide medical care and the regulations to reimburse just claims, the military has granted relief to the crime victim as an implicit benefit of service membership.

Footnotes

1. Ga. Code Ann. §§ 47-518 to -527 (Supp. 1972); Nev. Rev. Stat. § 217 (1969); Ann. Cal. Code § 29632 (1971).
2. N.J. Rev. Stat. § 52:4B-1 *et seq.* (Supp. 1973); Mass. Gen. Laws Ann. c. 258A (1968); N.Y. Exec. Law § 620 (McKinney Supp. 1966, as amended 1968).

3. N.Y. Exec. Law §§ 624-30 (McKinney Supp. 1966, as amended 1968).
4. See 119 Cong. Rec. S18,693 (daily ed., Oct. 8, 1973), 93d Cong., 1st Sess. See also 14 Cr. L. 2055.
5. 10 U.S.C. § 1074(a).
6. U.S. Dep't of Army, Pamphlet No. 27-6 (1968).
7. 10 U.S.C. § 1076.
8. See generally, Army Reg. No. 27-20, § 11-4 (Change No. 4, 1 June 1973).
9. *Ibid.*
10. *Ibid* § 11-5(a).
11. *Ibid* § 11-6(j).

The Personnel Picture

This article is taken from a presentation by Colonel Richard Bednar, Executive, and Lieutenant Colonel Hugh Overholt, Chief, PP&TO, OTJAG, before the 1973 Judge Advocate General's Conference.

Introduction—The outlook for the Corps is promising, what with promotion lists starting to move again, an increase in career-motivated Captains, a fruitful harvest of new recruits, and a solid officer procurement authority forecasted for the next several years.

General Personnel Outlook.

While other branches have suffered recent strength reductions, the JAG Corps has a present procurement authority for 350 new officers in Fiscal Year 1974. With some 325 applicants "on board" already, OTJAG is even more optimistic about the recruiting season this fall. The 69th Basic Class graduated some 90 officers last month, and the 70th Basic Class is scheduled to send almost 100 new officers to the field in mid-December. The Corps is even experiencing a decrease in its number of accepted applicants who had proved to be "no shows" in previous years. All of these factors indicate a promising personnel future, and could result in future DCSPER authority to overprocure. For a detailed rundown on the current manpower status of the Corps, see the charts that follow.

Excess Leave Program—Field support and good recruiting have upgraded the Excess Leave Program to where we may expect an increase above present forecasts for entry at the close of school year 1976. However, the

Corps still has authority to take some 100 officers into the program this year, with selection boards scheduled for January and February of 1974. In order to continue this program as a successful source of dedicated career-motivated judge advocates, all officers are reminded to talk up this program in the field. A sample news release on the subject is included in the personnel section of this issue of *The Army Lawyer*.

The OER System—Even though our JAGC picture did not come into focus as quickly as the total Army's, our OER's did run above pre-existing benchmarks. However, once a composite took shape, even our smaller officers Corps exhibited great variance in individual ratings and among separate commands. The newly released benchmarks do show a marked inflation over previous figures, and any officer worthy of promotion will probably require a truly "good" OER to accomplish that goal under the present system.

Raters and indorsers are reminded to make use of the "explanation" section of Part IV, Professional Attributes. Although this portion of the report can be employed for critical comments or reference to remedial counselling, its affirmative use is especially commended as a vehicle for bolstering comments of a favorable nature, with cited examples.

All indications are that the Army will not be scrapping this new evaluation system in the near future. DA will continue to wait for "water to seek its own level" after having marked these initial evaluation efforts as "first year reports." To alleviate any dis-

crepancies, current promotion boards are being thoroughly briefed on regional and installation variations that have been noted in scores for each officer grade. These briefings have stressed that boards should place most of their reliance upon the narrative portions of present OER's. Raters and indorsers should, again, be mindful of these present developments.

Assignments — Future JAGC assignments should reflect the stabilization of a peacetime Army. Absent military exigencies, if a man is happy in his present assignment he might expect to stay there for three, four or perhaps even five years if everything else is equal and this is in accordance with PP&TO's evaluation of good career development. All officers are urged to call PP&TO at any time regarding assignment questions—and to follow up that call with a letter. Short tours are no longer the big problem they once were, and most of our present policy is reflected in "Your JAGC Career." This new publication has just hit the field, and should clarify all JAGO assignment policies.

New Professional Evaluation—"JAPER," a new Judge Advocate Professional Evaluation Report, is scheduled for world-wide testing soon. This scheme will be utilized for gathering personnel management data in an effort to place officers in duty assignments that match their professional skills. This process will not be used in any part of the promotion process. New developments will be announced through technical channels and *The Army Lawyer*.

Special Pay—The Judge Advocate General's Corps has been identified as a group to receive special pay under the Uniformed Services Special Pay Act, should that legislation be passed. PP&TO remains hopeful on this prospect.

Officer Record Briefs—Officers are reminded that their Officer Record Brief continues to be the main management tool at MILPER-CEN. This important document is shaped by the input received at the installation level,

so every officer should verify this record during this annual birth month records check. A past history of recurring errors in this personnel form is enough justification for such a check, but all officers should otherwise make such that their efficiency files are updated and correct.

Entry Grade of Captain—The Corps has been granted authority to continue its entry grade at captain for his year and next year. Some concern was expressed earlier this year that our higher entry grade had hurt Navy recruiting. However, Navy entry at the rank of lieutenant junior grade has apparently been justified through its lower manpower requirements and quicker promotion rates.

Stenotype Schooling—Our fully-funded stenotype school has been approved. Note the detailed announcement in the personnel section of this issue of *The Army Lawyer*.

Paralegal Program—PP&TO is enthusiastic about plans in the mill for a paralegal program. This program has proven its merit in Germany, and there is hope that it can be implemented in other jurisdictions as well. Much should depend on the success of its summary sheet and how manpower can be allocated. Watch for future developments in *The Army Lawyer*.

Defense Officer Personnel Management System—Those who have read of this program in *Army Times* know that it is presently a very complex, long range system geared to manage the careers of *all* service officers. As applied to JAGC, it would provide for discretionary separate promotion lists and constructive service credit upon entry. It is probably some two years away, but officers should watch for breaking developments.

In-Service Recruiting—If money can be made available, it is hoped that one officer from PP&TO can tour each installation at least once a year to assist in the in-service recruiting of JAG's. The feasibility of this project is still uncertain.

Personnel Directory—The new "JAGC Personnel and Activity Director" should be filter-

ing down to the field by now. All corrections, comments and recommendations are welcomed.

JAG CORPS STRENGTH (AS OF 1 AUG 1973)

OFFICERS:

	MG	BG	COL	LTC	MAJ	CPT	Total
RA	2	3	97	88	147	173	510
Vol.-Indef.				6	18	39	58
OBV					1	929	930
Ret. Recall	1		3				4
Females			1		2	7	10
Total	3	3	101	94	163	1148	1512
Authorized Spaces	3	3	127	215	413	813	1574
Authorized End Strength FY 74							1535

WARRANT OFFICERS:

	W4	W3	W2	W1	Total
RA	1	5	3		9
OTRA	4	9	31	5	49
Total	5	14	34	5	58
Authorized Spaces					50
Authorized End Strength FY 74					53

JAGC RECRUITING (EXCESS LEAVE AND BRANCH TRANSFER)

Fiscal Year	Applications	Appointments
1967	1140	532
1968	1180	206
1969	1275	333
1970	1212	360
1971	670	200
1972	409	198
1973	379	180 *
1974	442 **	350 ***

* 225 Appointments were required.

** Number of applications to date. Traditionally, approximately one-half of the applicants are lost due to withdrawal or disqualification. To date, 62 have withdrawn.

*** Procurement authority.

JGAC EXCESS LEAVE OFFICERS (1 SEPTEMBER 1973)

School Year	MAJ	CPT	1LT	2LT	Total
1973	3	8	19	1	31
1974	1	27	15	5	48
1975		23	14	14	51
1976	2	16	33	20	71
Total	6	94	81	40	221

AUS PROMOTION SELECTIONS (AS OF 1 SEPT 1973)

	MAJ		LTC		COL	
	CONS	SEL	CONS	SEL	CONS	SEL
Previously	3	0	4	1	8	1
First Time	262	195	15	9	9	6
Secondary	218	2	52	2	12	3
JA First Time:	74%		60%		67%	
APL First Time:	83%		69%		31%	

RA PROMOTION SELECTIONS

	MAJ		LTC		COL	
	CONS	SEL	CONS	SEL	CONS	SEL
Previously	1	0	1	0	13	0
First Time:	28	21	8	8	19	10
JA First Time:	75%		100%		56%	
APL First Time:	82%		76%		35%	

WO AUS PROMOTION SELECTIONS

	W4		W3	
	CONS	SEL	CONS	SEL
Primary	2	2	0	0
Secondary	0	0	20	3

OFFICER PROMOTION STATUS (AS OF 10 AUGUST 1973)

	Promoted During FY 74	Remain On Current List	Expected List Exhaustion ¹	New Board Scheduled ²
COL	81	195	4th Qtr FY 74	Oct/Nov 73
LTC	114	772	1st Qtr FY 75	3d Qtr FY 74
MAJ	88	600	3d Qtr FY 74	3d Qtr FY 74
CPT ³	49	25	Sep 73	Oct 73
CW4	68	129	4th Qtr FY 74	3d Qtr FY 74
CW3	90	562	4th Qtr FY 74	3d Qtr FY 74

¹ Assumes no strength reduction

² Tentative; based on assumption above

³ New list scheduled for release September 1973

OFFICER PROMOTION LIST STATUS (—MC/DC)

	Promoted In FY 73 (Actual)	End FY 73 TIS (YRS)	TIG (YRS)	FY 74 Promotion Forecast
COL	763	21.0	6.1	450
LTC	1667	14.8	6.3	575
MAJ	944	9.3	6.5	800
CPT	1489	3.8	2.8	3000
CW4	263	10.8	5.6	250
CW3	1007	7.1	5.3	600

NOTE: Promotion point to first lieutenant and captain extending to 24 and 48 months TIS, respectively, by January 1974.

LEGAL CLERKS AND COURT REPORTERS

(31 JULY 1973)

LEGAL CLERKS (71D)

Authorized—1141

Operating—1021

COURT REPORTERS (71E)

Authorized—90

Operating—125

ASPR Committee Notes

By: LTC Joseph A. Dudzik, Procurement Law Division, OTJAG

If there is one thing that prevents an ASPR Committee member from getting a grossly enlarged ego, it is the committee's quarterly trips to Department of Defense field activities. I assure you that after speaking to procurement personnel at the Defense Construction Supply Center, Defense Contract Administration Service—Detroit Region, and our own Tank Automotive Command, Warren, Michigan, I can now get by with a hat two full sizes smaller. The discussions with the actual doers prove always interesting and, more often than not, quite spirited. This trip was no exception—we all realize that only through these free and frank discussion can we find out what we are doing right (very little) and what needs to be done (a great deal). In all candor, we do understand that your frankness is motivated by a desire for a better and more responsive regulation and therefore we appreciate it. I want to assure our ASPR readers at the facilities visited on this last trip that their comments and recommendations will be considered at future ASPR Committee meetings. I take this opportunity to acknowledge the hospitality and interest shown the Committee at our recent visit to the Tank Automotive Command. Colonel Donald M. Babers, Director of Procurement and Production, very competently led the discussion and assured that all had an opportunity to present their views. Mr. Richard T. Tarnas, the Chief Counsel, and Mr. Albert A. Dawes, Chief, Procurement Law Division, led the legal side of the house with very pointed and probing questions some of which in the tax area I was unable to answer. I hope to get some answers to them in the near future. I may not have made this clear, but after each trip all ques-

tions, comments and recommendations are reviewed at a committee meeting and considered for action.

After having been a member for the ASPR Committee for over two years, I believe I am in a position to state with some authority that the committee is composed of some of the finest procurement minds it has ever been my privilege to be associated with. I have been successful in obtaining a contribution from Mr. Gary P. Quigley of the Office of The General Counsel, Department of the Navy, which follows these notes. Mr. Quigley is the Navy legal member and the senior legal member on the ASPR Committee. I am sure after reading Mr. Quigley's article on the background of the ASPR Limitation of Contractor Liability for Defective Supplies coverage in DPC 86 you will agree that his position as Navy Legal Member on the ASPR Committee is well deserved.

In regard to the above referenced coverage in DPC 86, the committee has made certain modifications to that coverage, some of which are mentioned in Mr. Quigley's article. Briefly summarized, some of the changes which have been approved but not yet published are:

1. Major Items are defined.
2. Tech data is excluded from applicability of the clause.
3. A clause is provided for use in service contracts.
4. Provision is made for flow down of a clause to subcontractor.
5. Procedures for applicability of the limitation of liability provisions in Foreign Military Sales contracts are clarified.

In addition to the above changes to DPC 86 (to be published in new edition of ASPR presently slated for release on 15 April 1974, with a mandatory use date of 1 July 1974) the committee is working on a complete revision of the warranty coverage under ASPR 1-324.

Looking to the future, I hope in the coming months to be able to give you more information on this new warranty coverage which is being developed—and also some information on the new Value Engineering coverage which has been submitted to industry for comment. As already mentioned, the committee meets with industry representatives on each of our quarterly field trips and in addition, we have a semi-annual meeting with industry representatives in Washington. Mr. Thomas G.

Cassidy, the Executive Secretary of the Committee, has promised to write a summary of the questions posed to the ASPR Committee by industry to give you some idea what is of interest to our other customers. I will also endeavor to give earlier notification through these notes of the committee's next quarterly trip so that if you are in the area you may be able to participate in one of the meetings. If you have any comments, suggestions or recommendations on the ASPR, my address is: LTC Joseph A. Dudzik, Jr., Army Legal Member, ASPR Committee, Pentagon, Room 2C 440, Washington, D.C. 20310, Telephone: OX 72938. My small staff (me) may limit my response to a handwritten note on the bottom of your letter.

Development of Department of Defense Policy on Damage to Government Property Resulting From Defective Supplies

By: Gary P. Quigley, Navy Legal Member, ASPR Committee

This article is adapted from a presentation before the 11th Annual National Conference on Government Contracts jointly sponsored by the National Contract Management Association and the University of Minnesota.

In the good old days, Government contractors gave little thought to possible liability for damage to Government property resulting from defective supplies delivered by the contractor. Whatever the Government policy, expressed or unexpressed was, it was clear that such claims were very infrequently pressed. Both DOD and industry personnel accepted this situation, and there was relatively little pressure to define the Government's rights and the Contractor's obligations more precisely. Probably both sides felt that they would wind up the loser in any reallocation or redefining of risks.

Then in the 1960's a number of forces began to bring pressure to bear upon this state of contentment in Government procurement. The widespread adoption of the Uniform Commercial Code (U.C.C.) with its new legal weapons for buyers seeking redress for de-

fective products was probably the first force that began to make industry negotiators and lawyers somewhat uneasy. The courts and the contract appeals boards began to cite the UCC as a source of the best thinking in commercial law and thus a sound basis for federal law. In the mid 1960's both the Air Force and, to a lesser extent, the Navy began to intensify use of warranties in many of their major procurements. Both agencies usually declined to waive liability under these clauses for what the UCC termed, without clearly defining, "consequential damages." (See U.C.C. 2-715) The Armed Services Procurement Regulation (ASPR) Committee in its effort to collect all DOD procurement policy in ASPR rather than in the regulations of the separate services, published warranty clauses in ASPR in 1964. However, the decision on the extent of the use of a warranty clause was largely in the hands of the Military Departments.

Concurrently with these DOD actions, state and federal courts were holding manufacturers liable for damages resulting from defective equipment with increasing frequency.

Breach of warranty, negligence, or product liability were cited either singly or collectively as the basis for liability. Both DOD and industry began to recognize that warranties could be a source of some controversy in Government contracts. DOD's Industry Advisory Council initiated an in-depth study of warranties on May 1, 1968. Unfortunately, this study was a few days late—for on 11 April 1968 the hypothetical problem became a real one and DOD procurement has never been the same since. On April 11, 1968 an Australian P-3B aircraft crashed at Moffett Field, California and was completely destroyed. The plane had been procured by the U.S. Navy for Australia from Lockheed Aircraft Corp. and would have cost about \$5,000,000 to replace. Investigation disclosed that the crash resulted from a cracked piston in the landing gear manufactured for Lockheed by its subcontractor, Menasco Manufacturing Co. Tests showed that the crack should have been detected by normal inspection procedures during manufacture. Both Lockheed and Menasco contended that their liability was essentially limited to replacement of the defective part, *i.e.* the piston. They stressed what they viewed as a long standing DOD policy of not pursuing claims of this sort. Unpersuaded by this, on August 19, 1969 Australia brought suit against both Lockheed and Menasco asking \$3,700,000 damages, \$300,000 damages for loss of the use of the plane, and as against Menasco \$1,000,000 punitive damages.

Crucial to this case was the nature of DOD's policy on damage to, or loss of, its property resulting from defective supplies. The contractors and DOD produced documents, legal and insurance experts, and present and former Government officials in support of their positions. The Court finally ruled that, at least with respect to the airframe industry, the Navy had a policy of not excluding liability for damage to Government property. However, as a matter of practice, the Navy so seldom invoked this policy that it would be estopped had it brought an action against Lockheed and Menasco. The

judge went on to rule, however, that Australia was not bound by this and could proceed in its action. The case was finally settled with Lockheed and Menasco splitting the bill.

Although this case involved the airframe industry it sent shock waves through the Government contract community. Electronics manufacturers, ship builders, even consumer oriented manufacturers began to reassess their positions with respect to damage to Government property resulting from defective supplies. The potential for liability was not limited to a possible reduction of profit. For example, in the case of Menasco its potential liability was about 10% of its net worth. With the completion of the IAC study on warranties and the Australian P3 crash as an impetus, the ASPR Committee agreed to review DOD policy on warranties and to address itself with special emphasis to damages to Government property. This effort led to the promulgation of Defense Procurement Circular 86 (DPC) on February 12, 1971. DPC 86 stated that its purpose was to "establish Department of Defense policy with respect to contractor liability for loss of or damage to property occurring after final acceptance of supplies delivered to the Government and resulting from any defects or deficiencies in such supplies." This fairly terse statement was the result of over a year and a half of DOD study and discussion. Government contractors and the insurance industry both took a strong interest and advanced their views at the Pentagon.

Perhaps the best way to trace the development of DPC 86 is to establish what appeared to be of primary and immediate concern to both DOD and industry. The single most important decision reached during the early deliberations that led to DPC 86 was to avoid the use of the phrase "consequential damages." It was felt that this phrase raised more questions than it answered—no two people could seem to agree on what was intended by it. This, it was decided to delineate any exclusion of liability in terms of property, people, or events affected, rather than in

terms of legal conclusions such as consequential damages, or other current catch phrases as "product liability."

It was further agreed that the focus of the effort should be on damage to Government property occurring after acceptance, and not before. Damage before acceptance did not seem to be a major problem, and it was decided to leave this area as it was, with continued use of clauses such as "Aircraft—Ground and Flight Risk" to handle special high risk situations. It appeared that the major problem was potential contractor liability for damage to Government property. That is what led to the Menasco case and what was causing anxious moments in various corporate offices, particularly in the airframe industry. DOD owns personal and real property of such a diverse and mammoth scope that the potential liability for damage was difficult even to describe. Also, DOD controlled its property and could treat it in a way most suitable to its needs, and thus could readily establish a policy in its best interest without any statutory or Government-wide policy changes. Matters such as indemnifying contractors for injuries to, for example, Government employees would probably require legislation and would involve policy questions normally beyond the authority of DOD.

Having identified damage to Government property as the matter of primary importance, the key question was what criteria should govern DOD's decision. Emotional responses involving what contractors in good conscience should do, and somewhat speculative areas as to whether potential liability is a cost effective means of insuring a quality product were finally subordinated to one, and only one, question: Is it cheaper for DOD or industry to assume the risk of loss or damage to Government property resulting from defective supplies?

Insurance costs were the controlling factor in developing DPC 86. Although precise figures were difficult to come by, it appeared that something like two dollars of premiums

would be required for every one dollar of claims paid if DOD were to pursue claims for damage to Government property. This didn't seem to be a prudent course of action. Secondly, the insurance costs would probably pyramid as each subcontractor sought to protect himself. Finally, since a spreading of the risk is an essential element of an insurance program, it was clear that in military peculiar items DOD would pick up the entire cost of the premiums. Thus, after months of study it appeared that it was cheaper for DOD to assume the risk—hence the promulgation of DPC 86 which read, in part:

"It is the policy of the DOD generally to act as a self-insurer for loss of or damage to property of the Government occurring after final acceptance of supplies delivered to the Government and resulting from any defects or deficiencies in such supplies."

You will note that the DPC mentions "property of the Government" and does not use the more familiar ASPR phrase, "Government property." This wording was chosen to make it clear that all Federal Government property was intended rather than the more limited scope found in the ASPR definition of "Government Property." However, the exclusion of liability does not apply to property of state or local Governments. An interesting question could come up concerning such quasi-governmental bodies such as AMTRAK or the Postal Service. There were some in DOD who questioned whether DOD could waive liability for damage to property under the custody of another federal agency such as a federal office building, a post office, or the White House. This question was finally resolved in favor of DOD having this authority.

Another area of concern to DOD in developing DPC 86 was the seller who maintained insurance covering liability for damage to its customer's property and who was either unable or unwilling to offer a price reduction to DOD in the light of the new DOD policy. Thus it was decided that DOD's exclusion of liability policy would not apply when a con-

tractor maintained insurance or a reserve for this liability.

The insurance industry provided considerable data to DOD during this DPC 86 development and participated in public meetings on the subject. It is difficult to generalize in this area, but it appeared that they favored DOD's assumption of risk for loss to Government property. However, except for damage resulting from unusually hazardous risks such as contracts involving nuclear weapons, they preferred that private insurance coverage be used for potential liability to third parties and their property—what is normally known as products liability.

Another issue during the development of DPC 86 was whether DOD could, or should exclude only liability arising under a Government contract for breach of warranty, express or implied, or whether it would also exclude tort liability as well. Since the purpose of assumption of risk was to save money for DOD, it was decided to extend the exclusion to tort as well as contract liability.

It has been more than two years since issuance of DPC 86, and some of the remaining problem areas have been the subject of further study by DOD and changes to ASPR will be published to cover these areas. One of the most troublesome areas was a contractor's potential liability to a foreign buyer, probably stimulated by memories of the Menasco case. The DPC 86 clauses would limit liability for damage to United States Government property, but presumably would not act as a buffer to the suit of a foreign buyer whose property was damaged. The same factors that led to the development of the policy on damages to U.S. Government property led to the extension to foreign buyers. A change to ASPR will require that a foreign customer be advised that the limitation of liability clause will be included in the Foreign Military Sales contract and will be binding between the foreign customer and the American contractor. In addition, the DD Form 1513 which constitutes the agreement between the

U.S. Government and the foreign buyer has been modified to reflect the new policy.

Another ASPR change will permit prime contractors and higher tier subcontractors to flow down provisions of the limitation of liability clauses to lower tier contractors. The original DPC 86 coverage contained a policy statement that the limitation of liability provisions applied to supplies delivered to the Government without distinction as to their source, and thus special reference was not made to subcontractors. However, since this policy statement was not carried over into the final ASPR coverage and presumably since prudent contractors prefer a contract clause rather than a general policy statement, ASPR will now specifically address flowdown of the substance of the limitation of liability clauses.

One of the major gaps in the current ASPR coverage is the lack of coverage for service contracts. The reason for this is twofold. First, service contract clauses involved special problems of definition and of scope, and secondly, it seemed that promulgation of agreed upon coverage on what seemed to be the most pressing problem area—that of supply contracts, should not be delayed while DOD tried to draft a suitable clause for service contracts. In any event, ASPR will provide that the policy of limiting liability for damages to Government property is extended to service contracts by a new clause similar to that used in supply contracts. One of the real problem areas here is that the limiting of liability policy applies only after acceptance, and it is not easy to establish, for example, when ADP services, guard services, and the like are "accepted" with respect to the policy.

Industry has also been troubled by the current ASPR coverage which removes the Government's assumption of risk for damage to its property caused by fraud or gross negligence amounting to fraud of any contractor personnel. The forthcoming ASPR change will provide that this exclusion for fraud or gross negligence amounting to fraud is limited to that of contractor managerial person-

nel as in other standard clauses such as the Government Property clause for negotiated contracts. Again, this change is proposed to reduce the insurance coverage, and thus the ultimate cost to the Government.

The ASPR Committee considered, but declined to do so at the time of DPC 86, defining what constitutes a "major item" in terms of a dollar amount. The basis for this was the hope that a general definition relating to types of equipment would suffice and secondly, that experience under DPC 86 might provide a better basis for a more precise definition, if indeed one were necessary. It has now been decided that items having a unit cost of \$100,000 should normally be considered as major items. Of greater controversy and with perhaps a greater long range impact on industry are some other areas of contractor liability that DOD is now actively studying. Currently, DOD is reviewing its overall warranty policy. That is—should DOD use only express warranties? Should we place any reliance on implied warranties? Do we have an administrative system that will identify defects without great cost and time delay so these warranties can be cost effective? Of special interest here are Congressional actions in the areas of warranties and a General Accounting Office review of DOD's use of warranties.

DOD will be seeking industry comments on this matter in the near future.

With respect to the type of liability covered by DPC 86, there appears to be little chance of any substantial change by DOD in the absence of change directed by statute. There are some in DOD who urge that a form of limited liability for damage to Government property be retained—either a dollar amount or a percentage of the contract price. Adoption of this approach seems unlikely, at least, until considerably more experience has been gained under the current policy. There appears to be little inclination to extend the exclusion of liability beyond that for property of the Government. Some in industry have urged that DOD indemnify contractors for damages to Government employees or other Government activities resulting from defects in supplies or services. This has not found a favorable response in DOD.

As a final note, the Commission on Government Procurement has recommended that DOD's policy on damage to Government property resulting from defective supplies be extended throughout the Executive Branch. It would seem that this recommendation attests to the soundness of the policy developed by DOD originally promulgated in DPC 86.

Claims Items

From: U.S. Army Claims Service, OTJAG

1. Status of Theft Claims

An analysis of the statistics for personnel claims reviewed during the period from January 1973 through July 1973 reveals the following concerning the incidence of theft claims on the basis of the rate per thousand of troop strength:

<i>Month</i>	<i>Theft Claims</i>	<i>Rate Per 1,000</i>
January	1,135	1.33
February	1,208	1.43
March	1,042	1.26
April	1,186	1.45
May	1,099	1.36
June	783	0.98
July	1,186	1.46

The average rate per 1,000 for the period January 1973 through July 1973 was 1.33. This rate still reflects an overall improvement in the area of theft claims when compared with the 1.66 average rate per 1,000 for calendar year 1972.

The low rate for June and increased rate for July apparently indicates that some theft claims which would have been paid in June were held over for payment in July when claims expenditures were not restricted. The average rate for June and July combined was 1.22 and this rate is more indicative of the actual rate during those months.

The total payment for theft claims in CY 1972 was \$3,351,394.00. The total payment for the period January 1973—July 1973 in CY 1973 was \$1,656,142.00. The projected total payments for CY 1973 is \$2,839,092.00 which would represent an improvement of approximately \$500,000.00 less total payment for theft claims when compared with CY 1972.

This Service was recently contacted by the Office of the Provost Marshal General with reference to its continuing interest in theft statistics and in particular, statistics as to barracks larcenies. That office was informed of the most recent months' theft claims statistics and provided information as supplied by our random audit of claims by the post settlement review branch. The results of this post settlement review audit for certain periods in 1972 to July 1973 are set forth below. These tables reflect the results of the audits for barracks larcenies and on-post robberies. Statistics for on-post robberies were commenced in July 1972 and for barracks larcenies in September 1972. The audit usually represents a 50% sampling of the total claims. Both analyses need a larger time base before trends can be usefully detected. It does appear, however, that on-post robbery claims have been extremely rare.

BARRACKS LARCENIES

Month	Rate	Barracks Larcenies	No. of PC Claims Audited
September 1972	.15	470	3,013
October 1972	.12	392	3,245
November 1972	.08	263	3,155
December 1972	.12	367	2,889
Avg Rate/Totals	.12	1,492	12,302
January 1973	.18	678	3,714
February 1973	.12	422	3,429
March 1973	.09	338	3,471
April 1973	.11	205	1,794
May 1973	.12	361	2,881
June 1973	.14	539	3,697
July 1973	.17	408	2,389
Avg Rate/Totals	.13	2,951	21,375

ON-POST ROBBERIES

Month	Rate	On-Post Robberies	No. of PC Claims Audited
July 1972	.004	12	2,841
August 1972	.003	15	4,333
September 1972	.003	10	3,013
October 1972	.004	14	3,245
November 1972	.0009	3	3,155
December 1972	.001	4	2,889
Avg Rate/Totals	.002	58	19,476
January 1973	.005	22	3,714
February 1973	.002	9	3,429
March 1973	.003	11	3,471
April 1973	.003	6	1,794
May 1973	.002	7	2,881
June 1973	.004	18	3,697
July 1973	.004	10	2,389
Avg Rate/Totals	.003	83	21,375

2. **New Household Goods Brochure.** Reproduced below is a brochure entitled "Can You Afford to Lose All Your Household Goods?" This Service has requested appropriate authorities within DA, DCSLOG to distribute this one-page handout to field transportation offices for distribution to service members prior to moving their household goods. It is requested that all staff judge advocates maintain liaison with their local transportation officer to encourage the distribution of this publication as soon as possible. It is hoped that this type of preventative claims action will result in a better informed soldier and lessen the monetary impact on the Government for the payment of household goods claims.

Can You Afford To Lose All Your Household Goods? If your personal property is shipped by the Government and it is lost or damaged, you may file a claim for that loss or damage. It is extremely important, however, that you understand a few basic facts concerning household goods claims and in particular the limits of payment for such claims and the need for insurance coverage.

What Property The Government Will Pay For and What Is The Limit Of Its Payment? The Government will only pay for personal property that is considered reasonable, use-

ful or proper for you to possess incident to your service. For example, if you possess mechanics' tools or any other type item that you use in conducting a business, even on a part-time basis, the Government will not assume responsibility for such property.

There are several categories of property which the Government will not pay for in the event it is lost or damaged. In addition, many items of property may be paid for only in limited quantity and monetary amounts. Examples of these categories of property are paintings, oriental rugs, fine china and hobby collections.

In addition to the limitations indicated above, the Government will only pay up to \$10,000.00 per incident for any loss after all the limitations cited above have been applied to your property which is lost or damaged in shipment.

How Can You Protect Yourself In Case You Do Suffer A Loss Of The Items Not Payable By The Government And In The Event Your Loss Is Over \$10,000.00? It is extremely important upon receipt of orders that you obtain from the Household Goods Section of the Transportation Office a copy of DA Pamphlet 55-2, which is a comprehensive guide on what to do to protect yourself and the Government.

You should check the list of limitations, that is, the table of maximum amounts allowable, which is outlined in the DA Pamphlet 55-2. You should compare the list in relation to the personal property you own and request guidance from the transportation counselor on how best to protect yourself in the movement of that property.

You should always thoroughly discuss your move with the transportation counselor. He will advise you that you must declare all HI-VAL items in writing at the time of application for shipment. If this is not done these items will not be considered in any amount in the settlement of a claim.

You then have to make a decision as to what further action to take. You may decide to insure some of your property by purchasing

the type of insurance best suited to your needs or you may decide to hand carry certain HI-VAL items. In this regard, however, you should note that loss by theft or unexplained disappearance of HI-VAL jewelry or coin collections is not payable in any amount in the settlement of a claim.

There has been made available to the military member, a right to split his shipment if this will result in a lower cost for insurance. The member can, for example, ship the expensive items of personal property separate from the ordinary inexpensive household goods items. The member may obtain added protection on an interstate shipment within CONUS by declaring an excess valuation on the Government bill of lading and DD Form 1299. The charge for this type of coverage is based on the declared value and the cost is billed to the member on his pay voucher. There is no co-insurance problem; a valuation less than the actual value of the goods may be declared and any loss suffered will be covered up to the amount of that declaration. Utilizing this excess value method in conjunction with a split shipment should result in adequate coverage and in many situations, be less expensive than the purchase of other types of insurance.

In the event that you wish further guidance, you should seek advice from the local legally-trained claims officer. He will be able to answer the more complicated questions concerning insurance coverage and give any other legal guidance you may need.

What Should You Do? You must finally decide for yourself whether to insure your shipment. You should not make a decision, however, without being fully informed of all the facts prior to your move. Make sure you are fully informed by requesting advice from your transportation counselor and, if necessary, from your local claims officer. Failure to take necessary precautions may result in a loss of your household property with only a mere partial compensation from the Government of its total true value. In any event, you are advised that under no circumstances

can you ever be compensated by the United States Army in excess of \$10,000.00 per incident. Many members have household goods

whose total value far exceeds \$10,000.00

Are You One Of These Members?

CRIMINAL LAW ITEMS

From: Criminal Law Division, OTJAG

On 21 August 1973, the Court of Military Appeals in the case of *Fiore v. United States*, No. 73-40, granted a petition for extraordinary relief and issued an order requiring The Judge Advocate General to show cause why relief should not be granted. The order was based upon the fact that Fiore had been tried on 5 April 1973, transferred to the United States Disciplinary Barracks on 9 May 1973, and had not received a copy of the record of trial or of the convening authority's action as of 10 August 1973. The absence of the convening authority's action resulted in Fiore's being ineligible for consideration by a custody board for transfer to the US Army Retraining Brigade at Fort Riley, Kansas.

Delays of this type in the preparation of records of trial and the actions of convening authorities have been addressed previously in *The Army Lawyer* (DA Pam 27-50-8, page 20, August 1973), but continue to be a critical problem which, if unresolved, will result in future cases like *Fiore*. Further, courts will not be hesitant to require a detailed explanation of the reasons (which will have to be extraordinary) for unreasonable delay in a convening authority's action. Staff Judge Advocates are again reminded of their responsibility to insure that every effort is made to expedite the preparation of records of trial and the action by their convening authorities.

Legal Assistance Items

From: Legal Assistance Office, OTJAG

1. New Chief Speaks. The following message is from Colonel Clayton B. Tasker, new Chief of the Legal Assistance Office. The Judge Advocate General has expressed a desire that additional emphasis be placed on Legal Assistance throughout the Army. Let's expend more effort on those who are not in the disciplinary pipeline. They deserve it.

As new Chief, Legal Assistance, Department of Army, I am setting forth herein some of my views of Legal Assistance in the hope that they may be of help to Legal Assistance offices in the field.

Let's obtain a higher profile in the eyes of the military man and his dependents. If they don't know where to look for legal aid, what assistance they can receive or when to seek it, we have lost much of our battle. In other words, let's advertise and sell our product.

This can be done in many ways. Every Legal Assistance office regularly should publish articles in its local military paper pointing out legal pitfalls which the serviceman may encounter. These writings should be of such a nature as to catch the eye of the reader and make him want to read it. An erudite legalistic manuscript may send a law professor into orbit, but it will as well close the eyes and minds of the ordinary reader. Accordingly, I call on each Legal Assistance Officer to put out lively, readable legal advice articles each week. To assist in this project we will distribute articles which you may wish to use in your local publications. If you wish, you may use these manuscripts as written or edit or cartoonize them slightly for local color. In turn, I request that you send me copies of all original articles which you have printed in your paper. Selectively, your works will be

made available to all the other Legal Assistance Officers.

Some installations have Legal Assistance brochures which are distributed to new arrivals at their installations. These handouts are especially valuable when local laws are emphasized.

Along with aforementioned writings you should prepare Legal Assistance lectures for consumption by servicemen and their dependents. Again, let's not put the listener to sleep. Have a personable lecturer and a lively talk. Also take advantage of our legal assistance film.

Commencing next month all Legal Assistance offices (we have 196) will receive various Legal Assistance handouts for use in Judge Advocate offices. The JAG School will make a bimonthly distribution of these documents. If there are any suggestions as to what material should be disseminated in this fashion, please let my office know about them.

Any recommendations as to how our Legal Assistance program can be enhanced will be appreciated. Let's make Legal Assistance a worthwhile and effective influence on every installation.

2. Divorced Remarried Mothers. A divorced mother who keeps custody of her children remarries and continues to receive child support payments from her previous husband. However, she and her new husband contribute more to the children's support than the previous husband. Who's entitled to claim the children as dependents? That can be arranged for under the divorce decree or other arrangement. But without such an arrangement, under old rules the mother alone had to contribute more than the previous husband in order to claim the children as dependents. Under a new ruling she can add her new husband's payments to hers and take the exemptions if the combined total exceeds the previous husband's payments. Remarried wives

may be able to claim tax refunds for back years as a result of the new ruling; ex-husbands won't lose their past exemptions in those cases, but might have to give up the exemptions in future years. *Revenue Ruling 73-175.*

3. Spode China. During 1970 and 1971 a number of service people contracted to purchase Spode China from a Mr. Greenwood acting as their agent at various military installations. Quite a few of the orders were not filled or first line china was not shipped despite the payments which had been made by the customers. Spode has agreed to honor all such orders which were received by Spode prior to 1 December 1971.

If any legal assistance clients have been awaiting the above news they should write furnishing appropriate information to Spode Limited, Stoke On-Trent, STY, IBX, England in order to obtain delivery of their china.

4. Handouts. The initial distribution of Legal Assistance handout materials will contain:

1. VA Pam 26-4 "Questions and Answers on Guaranteed and Direct Loans for Veterans"
2. VA Pam 26-6 "To the Home-Buying Veteran"
3. Sample Forms of Legal Assistance brochures given to new arrivals at certain installations. These may be used as a guide for preparing similar booklets at installations not having such documents. Not distributed overseas due to inability to obtain sufficient samples.
4. Ten Legal Assistance articles.

It is expected that the above-mentioned items will be shipped about 15 Nov 73.

Future handout distribution will include, among other items, Master Tax Guide and Digest of Motor Vehicle Laws.

Lands Office Notes

From: Lands Office, OTJAG

Installation Judge Advocates are reminded of the existence of Executive Order 11724, 25 June 1973, establishing a Federal Property Council. This new order supersedes Executive Order 11508, which had covered the same area.

The former directive had provided for three different types of land surveys to determine the degree of utilization of Government real property: an in-house Army survey; a DOD survey of installation property; or a GSA survey of military and civil works properties. Under any of these three methods, the results were referred to DA for consideration by the Army Senior Review Board. This panel expressed any opposing Army views to the Federal Property Review Board, through DOD, for decision.

Under the new Executive Order, effective 1 July 1973, it becomes possible for the Property Review Council to ask GSA for a unilateral survey of DA properties, making a direct report to the Council. While no real changes in procedures implementing this Order have been received, there exists this possibility of a new utilization survey method. This situation could now make the on-the-spot GSA surveys of our installations a great deal more important, as it would eliminate the possibility of reclama and compromise. It can also make the visit of a GSA survey team to an installation the Army's one and only chance to thoroughly martial and present all aspects of our case for the ultimate consideration of the Council.

Judiciary Notes

From: U. S. Army Judiciary

Recurring Errors and Irregularities

a. *Ambiguous Pretrial Agreements.* The Army Court of Military Review continues to receive records of trial which contain pretrial agreements with ambiguous terms. Examples: (1) Providing for a "punitive discharge," rather than for a "dishonorable discharge" or a "bad conduct discharge"; (2) Providing for an unclear or uncertain portion of the sentence to be suspended. Where the agreement is clear in its intent, it will be honored by the Court; however, where it is ambiguous, the ambiguity will be resolved in favor of the accused. See, *U. S. v. Sercey*, CM 429951 (ACMR 26 Sep 1973). The fact that the agreement may have been drafted and proffered by trial defense counsel is immaterial. The staff judge advocate is responsible for insuring that the agreement is clear and unambiguous before he presents it to the convening authority. In this same connection, he should also insure that there is a meeting of

the minds as to the contents of any stipulation which is to be a part of the negotiated plea.

b. *September 1973 Corrections by ACOMR of Initial Promulgating Orders:*

1. Failing to set forth a specification of a Charge to which a plea had been entered.
2. Failing to show in the FINDINGS paragraph that a certain Charge and its specification were dismissed by the military judge.
3. Showing, incorrectly, that the sentence adjudged included partial forfeitures for six months rather than for five months.
4. Failing to show the correct number of previous convictions considered.
5. Failing to show the ACTION verbatim.
6. Showing, incorrectly, that the sentence was adjudged by a military judge.

7. Failing to show that the pleas to a certain Specification and Charge were changed from guilty to not guilty.
8. Failing to show the correct date that the sentence was adjudged.

JAG School Notes

1. Basic Classes Grow. The 69th Basic Class graduated on 10 October and included 2 Iranian officers, 9 Coast Guard officers, and 88 Army officers who are now enroute to various judge advocate offices throughout the world. This was an extremely large class. Our 70th class, which arrived at Charlottesville to begin classes on 23 October, is equally large and made up entirely of Army judge advocates. This new 99-member Basic Class did not attend Phase I training at Fort Gordon, but instead came directly to Fort Lee for in-processing, finance records, physicals, and the usual requirements for entry into the Army. They were greeted at Fort Lee on 15 October by Colonel William Fulton, Director of Academics, and had a busy week before journeying to Charlottesville. They will graduate on 19 December and should be at their new stations right after the first of the year. The 71st Basic Class will report at Fort Gordon to the Military Police School for Phase I training on 14 November, and will complete that initial training before Christmas vacation.

2. Reserve Conference. The USAR Conference will be held in Charlottesville on 15-17 November, bringing together over 125 senior Reserve JAG officers for an annual meeting to discuss training and career problems. The 21st Judge Advocate Reserve Component Field Grade Refresher Course, beginning on 5 November, will participate in this conference. The new Chief of Reserve Components, Lieutenant General John J. Hennessey, will be the principal speaker at the conference. The keynote address will be given by Major General George S. Prugh, The Judge Advocate General.

3. Reserve SOLO Course. The School will present the first SOLO Course for Reserve officers during the month of December. This

follows thirteen successful SOLO Courses for the Active Army and it will be the first opportunity for senior Reserve officers to participate in this training.

4. ABA Committee Visits TJAGSA. On 12-13 October, the School was host to the new Standing Committee of the American Bar Association on Military Law chaired by Admiral Hugh Howell of Atlanta, Georgia. This gave the School an opportunity to brief the members of this important ABA committee on school activities and to show them the progress being made on the new JAG School building.

5. Advanced Class Speakers. Last month the School was honored to have the Acting General Counsel of the Department of Defense, Mr. Leonard Niederlehner, speak to the 22d Advanced Class. Later in October, Mr. Don Santarelli, Administrator of the Law Enforcement Assistance Administration, spoke to the Advanced Class. Mr. Santarelli is a graduate of the University of Virginia and a member of the University of Virginia Board of Visitors. Brigadier General James McGarry Simpson, The Judge Advocate General of the Canadian Armed Forces, is also scheduled to address the Advanced Class in early November.

6. TJAGSA Courses. All JAG officers are reminded to consult their August issues of *The Army Lawyer* (pages 22 & 23) for a schedule of resident continuing legal education courses offered at The Judge Advocate General's School through August 1974. We should all be mindful of these fine opportunities for professional advancement in every phase of military law offered here at the JAG School.

Administrative Law Opinions*

(Separation From The Service — Grounds; States And State Law) Concealment Of Expunged Civil Conviction Or Instance Of Withheld Adjudication Of Guilt Is Fraudulent Entry. An opinion was requested whether paragraph 14-5c, AR 635-200, 15 Jul. 1966, as changed, applies to concealment of a civilian conviction that has been expunged from an individual's records, or in cases where adjudication of guilt has been withheld pending probationary performance, under applicable state procedures.

A requirement for disclosure was found in both instances, based on the definition of "conviction" found in paragraph 3-9a(3), AR 601-210, 1 May 1968, as changed. This regulation imposes a duty on an individual to obtain a moral waiver for offenses resulting in "initial civil convictions or initial adverse juvenile adjudications" upon penalty of a possible discharge for fraudulent enlistment, and to disclose those incidents which require waiver processing. "Initial civil conviction" is therein defined as a determination of guilt by a court or jury based either on the merits of the case or the defendant's plea of guilty or *nolo contendere*, regardless of the imposition, suspension or withholding of sentence—and regardless of subsequent expunction. Although not stated in paragraph 3-9a(8), there must also be a "determination" of guilt if, after a hearing on the merits or by virtue of plea, an individual is placed on probation without any formal "adjudication of guilt." In order to facilitate a standard Army-wide definition with less reliance on varying state law, "conviction" within the meaning of paragraph 14-5c, AR 635-200, *supra*, should be read within the context of paragraph 3-9a(3), AR 601-210, *supra*. (DAJA-AL 1973/4278, 18 Jul. 1973)

* The headnotes for these opinions conform to The Judge Advocate General's School Text, "Effective Research Aids For The Preparation of Military Affairs Opinions," February 1971.

(Allowances—General; States And State Laws) Accrued Or Advanced Leave May Be Given To Serve Civilian Sentence Without Bad Time. Participation In Civilian Work Release Program Approved. An opinion was sought regarding an individual's request for accrued leave in order that he could serve a civilian sentence without incurring "bad time." No prohibition against a discretionary grant of this request could be found in view of the fact that a member on authorized leave avoids "bad time" for coincidental civilian detention until his leave expires under para. 1-5c(5), AR 630-5, 26 Jan. 1970, as changed by C7, 3 Sep. 1971. Subject to the time limitations in para. 5-1, AR 630-5, *supra*, advance leave may also be granted for this purpose if the approving authority determines it will help resolve an individual's "personal emergency, or morale problems."

No objection was noted to participation in a state-authorized "work release" program whereby a soldier performed normal military duty, plus any non-scheduled duties certified to by the commander concerned. The Comptroller General (Ms. Comp. Gen. B-715113, 5 Dec. 1972) has ruled that full pay and allowances commensurate with grade and specialty are merited during participation in such programs, and the Army operates its own "prototype" work release program at Ft. Leavenworth. (DAJA-AL 1973/4325, 16 Jul. 1973).

(Absence Without Leave; Boards And Investigations—General) Mere Execution Of Board Waiver Before JAGC Officer Did Not Constitute Return To Military Control. Three-Year Old AR 635-206 Action From Previous Post May Be Completed. A member AWOL from RVN was apprehended by Texas civilian authorities in September 1969. His January 1970 conviction by the civilian authorities gave rise to discharge action UP AR 635-206. Following a post-arrest assignment to Fort Bliss, elimination action was commenced by that installation in April 1970. The individual executed an unwitnessed, undated board waiver following notice of this action. In

October of 1970, he was paroled to New York, with no return to military control and no further action taken by Bliss on his discharge. That same month, while still in AWOL status, the member appeared before a JAGC Captain at Fort Hamilton and executed a second waiver of appearance before a 206 board. No additional action was taken relative to his discharge, and he was eventually released from New York parole in January 1973. His next military contact was by phone with an AGPERCEN representative in March 1973.

It was concluded that return to military control should not be presumed merely from an appearance before a JAGC Officer then acting as a legal advisor, notwithstanding the individual's act of waiver and apparent communication of AWOL status. No physical control was exercised over the member, and the facts supported a lack of restriction on his freedom of movement. Regarding discharge, the requirements of procedural due process had been met via notice, right to counsel and an opportunity to be heard. Paragraphs V A 2 and VIII D 2 & 3, DoD Dir. 1332.14, 20 Dec. 1965, as changed, do not prohibit continuation of the initial 206 action from Bliss, although it should include the subsequent waiver made in the presence of counsel at Fort Hamilton. A new discharge action was a suggested alternative, as was a discharge for the convenience of the Government. (DAJA-AL 1973/4273, 16 Jul. 1973)

(Separation From The Service—Grounds) **Military Judge's Dismissal Of Charges For Lack Of Jurisdiction Is Final Judicial Determination That Individual "Is Not Currently A Member Of The Army."** A 16 year old enlisted in the regular Army on 12 July 1971 for a period of two years. At the time of enlistment his DD Form 4 indicated that he would be 18 in eight days. His eighteenth birthday was actually 3 August 1972. Individual was subsequently reported AWOL from 16 October 1972 until 1 February 1973. In a SPCM trial, the military judge dismissed the charges because of a lack of jurisdiction. In affirmative response to an inquiry whether his

release from the service could be effected UP paragraph 5-12, AR 635-200, 15 Jul. 1966, as changed by C31, 13 Oct. 1971, it was opined that a final military judicial ruling of lack of jurisdiction over an individual is dispositive that he "is not currently a member of the Army." (DAJA-AL 1973/4163, 10 Jul. 1973).

(Information, Release Of — General) **Release Of Army Records To Military For Purposes Not Required In Official Duties Or For Personal Usage Is "Outside" DA.** A captain sought a copy of correspondence between a university PMS and Chief, ROTC Div, DC-SOT, First U. S. Army. The requested record apparently pertained to a personnel action involving the officer. He was twice refused by both corresponding agencies.

In response to a query from the Freedom of Information Office, it was opined that release of Army records, for the personal usage of active or reserve members, or for purposes not required for performance of official military duties, is release "outside of the Department of the Army." Army Regulation 345-20, 30 Jun. 1967, as changed by Change 4, 29 Jul. 1973) (superceded by AR 340-17, 25 Jun. 1973) was found not to apply to request for Army records by Army personnel required for the performance of their official duties. (DAJA-AL 1973/4377, 11 Jun. 1973)

(Prohibited Activities—General) **Honorary Membership In Local AUSA Chapter And Society Of The First Division Based On Military Position.** An opinion was requested regarding the legal status of certain membership within local chapters of the AUSA and the Society of The First Division. It was noted that the AUSA is categorized as a "trade or professional organization" UP paragraph 3d, AR 1-210, 30 Nov. 1972. All positions in a local chapter of AUSA which attach to a particular military position without regard to who holds such position are considered honorary memberships or offices under the regulation, notwithstanding the payment of dues. "Active duty and retired officers and enlisted men" may hold elective offices within a local AUSA chapter if acting as "individuals" as provided

by paragraph 4, AR 1-210, *supra*, and within the limitations of AR 600-50, 6 Mar. 1972.

The Society of The First Division was found to be a social organization rather than a "trade or professional" association within the meaning of AR 1-210, *supra*. An honorary office or membership therein was found allowable even though based on an official DA position. Immediate disassociation in potential cases of conflict of interest within the meaning of AR 600-50, *supra*, was recommended, along with restricted use of such member's name on Society letterheads and non-local directories. It was further pointed out that the Society and local AUSA chapters existing on-post must meet the requirements of paragraphs 1-2c and 1-3f, AR 230-1, 8 Apr. 1968, to include the installation commander's written consent, in order to qualify as private as-

sociations. (DAJA-AL 1973/3828, 27 Apr. 1973)

(Retired Members — Civilian Pursuits) **Foreign Employment By Retiree In Competition With American Industry Is No Longer Prohibited.** An inquiry from a retired warrant officer was directed to TAGO asking whether certain prospective foreign employment was "in competition with American industry" and thus prohibited by paragraph 29 of the Handbook on Retired Services, DA Pam 600-5, with a resulting loss of retired pay. It was noted that the prohibition of Executive Order 5221, referred to within the pamphlet, has been revoked by Executive Order 11681, found in the *Federal Register*, Volume 37, Number 164, 23 Aug. 1973. (DAJA-AL 1973/3925, 9 May 1973)

JUDGE ADVOCATE GENERAL'S CORPS RESERVE COMPONENT TECHNICAL TRAINING (ON-SITE) January — March 1974

The Reserve Component Technical Training Schedule (On-Site) for January through March is set forth on the following pages. Action officers should insure integration of the listed dates in appropriate local training schedules. Coordination should be initiated with the "units other than JAGSO" listed to provide maximum opportunity for these JAG officers to plan to take advantage of this training. All JAG Corps officers assigned to JAGSO teams and "units other than JAGSO" should attend the sessions in the locality. Maximum attendance is essential to insure attainment of unit readiness. Questions concerning the on-site instruction by local Reserve Component officers should be directed to the appropriate Action Officer. Problems encountered by Action Officers or Unit Commanders should be directed to Assistant Commandant for Reserve Affairs, TJAGSA, Charlottesville, Virginia 22903, telephone 804-293-7469.

Initial reaction to the "on-site" training has been highly favorable. The practical ap-

plication of the on-site technical training program is demonstrating that relevant and current material delivered in a professional manner can be presented to the reservist in the local area. Combined with the desire of the Reserve Component officer to participate in current challenging problems and to be knowledgeable in his subject area this program should materially assist in achieving a uniform standard of excellence throughout the Active Army and the Reserve Components. Reserve Component JAG Corps Officers assigned to the additional units listed on the schedule should advise their commander of the "on-site" training and request Equivalent Training for unit assemblies during the month of the technical training. Action Officers should insure that contact is made with the units listed on the schedule and, if possible, other Reserve Component JAG Officers in the area to advise them of the planned training.

RESERVE COMPONENT TECHNICAL TRAINING SCHEDULE (ON SITE)

The Secretary of the Army of the United States (Civilian Personnel) is directed to provide for the training of Reserve Component personnel in the following areas:

ACADEMIC DIVISION	DATE	TIME	CITY	STATE	BLDG. OR TNG CENTER	OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
ICL	7-8 Jan	1900-2300	San Juan, PR	PR	NAT. GD. Puerto Tierra	92d SEP IN BDE (NG)	COL Antonio J. Amadeo	725-8225
	9-10 Jan	1900-2300	Miami, FL	FL	5601 San Amaro Dr., Coral Gables, FL	3220th USAG 478th CA Co	LTC Aiden W. Drucker	305-538-1461
	12 Jan	0800-1500	Orlando, FL	FL	Taft USAR Center	3269th USAG 143d TRANS BDE	LTC Theodore E. Van Deventer	305-636-1753
Civil (LegAst)	5 Jan	0800-1500	New Orleans, LA	LA	U.S. Army Reserve Center 5610 Leroy Johnson Drive	377th SPT BDE	LTC Donald Mintz	504-586-1200
	7-8 Jan	1900-2300	Austin, TX	TX	USAR Center	71st SEP AEN BDE (NG)	MAJ Charles W. Richards	512-477-9623
	9-10 Jan	0800-1500	Dallas, TX	TX	Michert Reserve Center	36th SEP IN BDE (NG) 562d CA AREA B 490th CA Co 4013th USAG	MAJ Virgil Lowrie	817-387-3831
Crim	7-8 Jan	1900-2300	Portland, OR	OR	Vancouver Barracks	364th CA AREA B 41st SEP IN BDE (NG)	CPT Jeffrey T. Noles	503-224-1900
	9-10 Jan	1900-2300	Honolulu, HI	HI	Bruyeres Quadrangle	104th TNG DIV STATE AG 451st CA Co	LTC Donald C. Machado	808-86-2681
	12 Jan	0800-1500	San Francisco, CA	CA	Harmon Hall, Presidio of San Francisco	6211th USAG 91st TNG DIV 445th CA Co	LTC Lionel M. Allan	408-286-9800
Crim	14-15 Jan	1900-2300	Cleveland, OH	OH	NOTE USAR Center		MAJ Robert E. Elaser	216-696-1144
	16-17 Jan	1900-2300	Columbus, OH	OH	Army Reserve Center	STATE AG 59d ARCOM 16th ENG BDE (NG)	LTC Richard A. Lavinsky	614-228-5711
	19 Jan	0800-1500	Des Moines, IA	IA	Bldg 59, Ft Des Moines	103d SPT BDE STATE AG	LTC Walter McManus	515-282-8171
Civil (LegAst)	21-22 Jan	1900-2300	St. Louis, MO	MO	Training Center #1	102d ARCOM 35th ENG BDE (NG) 307th CA GROUP 4013d TRANS BDE (RAILWAY)	CPT Robert E. Ritter	314-241-9620

Initial reaction to the "on-site" training has been highly favorable. The practical ap-

ACADEMIC DIVISION	DATE	TIME	CITY STATE	BLDG. OR TNG CENTER	UNITS OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
Civil	23-24 Jan 26 Jan	1900-23 0800-15	Wichita, Kan Kansas City, Mo	USAR Training Center Long USAR	89th TNG DIV 418th CA Co	LTC Robert L. Chestnut LTC Jack Bohm	316-689-7171 816-842-6422
Civil (Claims)	21-22 Jan 23-24 Jan	1900-23 1900-23	Norfolk, Va Baltimore, Md	2086 USAR Tng Warehouse Sheridan USAR Center	450th CA Co 354th CA AREA B 300th CA GP 2122D USAG 510th CBT SPT FIELD DEPOT	CPT Robert L. Bohannon LTC John Faulk	804-622-6357 202-382-6123
	26 Jan	0800-15	Philadelphia, Pa	Philadelphia Mem. AFRC	79th ARCOM 304th CA AREA B 358TH CA AREA B 416TH CA Co 404TH CA Co STATE AG OF NJ	CPT Joseph S. Berarducci	215-568-7666
Proc	21-22 Jan 23-24 Jan	1900-23 1900-23	Rochester, NY New York, NY	James Wadsworth USARC Patterson USAR Center	402D CA Co 98TH TNG DIV 401ST CA Co 301ST LOG SPT BDE 77TH ARCOM 353D CA AREA B 356TH CA AREA B 411TH ENG BDE 42D IN DIV(NG) 78TH TNG DIV 50TH ARMORED DIV(NG) 303D CA Co	LTC Robert G. Beachman COL Morton Levinson	716-724-4219 212-947-0941
	26 Jan	0800-15	Edison, NJ	Reserve Center		LTC J. Leonard Horstein	201-656-2838
Civil (LegAst)	28-29 Jan 30-31 Jan 2 Feb	1900-23 1900-23 0800-15	Indianapolis, IN Dayton, OH Chicago, Ill	Boros Hall Dayton USARTC Cornell USAR Center	STATE AG 451ST CBT SPT FIELD DEPOT 38TH IN DIV(NG) 123D ARCOM 86TH ARCOM 416TH ENG CMD 85TH TNG DIV 308TH CA GP 363D CA Co 425TH TRANS BDE	LTC T. D. Wilson LTC Carroll E. Hunt CPT Allan B. Miller	317-923-4573 513-223-0808 312-282-6200
ICL	4-5 Feb 6-7 Feb	1900-23 1900-23	Charlotte, NC Columbia, SC	USAR Center Forest Drive Armory	108TH TNG DIV 120TH ARCOM 360TH HQ AREA 1182D ARMY TERMINAL CMD 81ST ARCOM STATE AG 310TH CA GP 449TH CS FIELD DEPOT	CPT Hugh Campbell LTC H. Hugh Rogers	704-333-8873 803-359-2599
	9 Feb	0800-15	Atlanta, GA	Chamblee Armory		MAJ James E. Baker	404-526-4281
Crim	4-5 Feb	1900-23	Seattle, Wash	Harvey Hall, Ft Lawton	STATE AG 124TH ARCOM USA TERMINAL UNIT (1305) 81ST SEP IN BDE (NG) 365TH CA AREA B 448TH CA Co	MAJ John P. Cook	206-624-7990

ACADEMIC DIVISION	DATE	TIME	CITY STATE	BLDG. OR TNG CENTER	UNITS OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
Crim	6-7 Feb	1900-23	Los Angeles, CA	#850 Ft Mac Arthur	63D ARCOM 301ST CA GP 311TH SPT BDE 40TH SEP IN BDE(NG) 40TH SEP ARM BDE(NG) 426TH CA Co 425TH CA Co	CPT John J. Wittorff	213-485-3640
	9 Feb	0800-15	Sacramento, CA	555 Capitol Mall (2d Floor)	STATE AG	COL Willard A. Shank	916-445-2326
Proc	4-5 Feb	1900-2300	Richmond, VA	Monteith USAR Center	80TH TNG DIV 300TH SPT GP STATE AG 2174TH USAG	LTC Robert L. Masden	804-770-2293
	6-7 Feb	1900-2300	Milwaukee, WI	536 W. Silver Spring Drive	84TH TNG DIV 32D SEP IN BDE(NG) 432D CA Co 89TH ARCOM	LTC James W. Moll	414-762-7000
	9 Feb	0800-1500	Minneapolis, MN	Bldg 501, Ft Snelling	205TH IN BDE 205TH SPT BN CO A (ADMIN) 47TH IN DIV (NG) STATE AG 407TH CA Co	MAJ Jerry C. Klas	612-377-5511
ICL	11-12Feb	1900-23	Houston, TX	Annex Bldg.	75TH MANEUVER AREA COMMAND	MAJ Donald M. Bishop	713-224-9811
	13-14Feb	1900-23	Baton Rouge, LA	Saurage USAR Center	STATE AG 256TH SEP IN BDE(NG)	MAJ Carl Guidry	504-344-9220
	16 Feb	0800-15	New Orleans, LA	U.S. Army Reserve Center 5016 Leroy Johnson Drive	377TH SPT BDE	Lt Donald Mintz	504-586-1200
Proc	11-12Feb	1900-23	Denver, CO	I-332 Fitzsimmons Gen Hos	STATE AG	LTC Bernard Thorn	303-244-3357
	13-14Feb	1900-23	Albuquerque, NM	Bldg. # 327, Kirk AFB	156TH SPT GP	COL David F. Boyd, Jr.	505-842-8287
	16 Feb	0800-15	Omaha, NB	USAR Center	67TH SEP IN BDE(NG)	MAJ John Churchman	712-322-4965
Crim	11-12Feb	1900-23	Spartanburg, SC	USAR Training Center	STATE AG 492d CA Co	LTC H. Hugh Rogers	803-359-2599
	13-14Feb	1900-23	Chattanooga, TN	Alexander Guerry USARTC		LTC William Scherrill	615-267-0483
	16 Feb	0800-1500	Jackson, MS	USAR Training Center		LTC Thomas W. Crockett, Jr.	601-948-8820
Civil (LegAst)	25-26Feb	1900-23	Orlando, FL	Taft USAR Center	3269TH USAG 143D TRANS BDE	LTC Theodore Van Beverter	305-656-1753
	27-28Feb	1900-23	Knoxville, TN	USAR Center	489TH CA Co	MAJ Harvey L. Sproul	615-986-8054
	2 Mar	0800-15	Washington, D.C.	Ft. G. Meade, Theater #3	220TH MP BDE 310TH FASCOM 97TH ARCOM NG HQ's STATE AG FOR MD	MAJ Russell M. King, Jr.	703-525-9400
Civil (Claims)	25-26Feb	1900-23	Oklahoma City, OK	Krowse USAR Center	95TH TNG BDE 4003D USAG 45TH SEP IN BDE	MAJ Stuart Hunter	405-236-2727
	27-28Feb	1900-23	Tulsa, OK	USAR Center	STATE AG 486TH CA Co	LTC Arthur Breeland	918-582-5201
	2 Mar	0800-15	Little Rock, AR	Seymour Terry Armory	122D ARCOM 39TH SEP IN BDE(NG) STATE AG 431ST CA Co 306TH CA GP	LTC William Mitchell	501-624-5404
Crim	25-26Feb	1900-23	Rochester, NY	James Wadsworth USARC	402D CA Co 98TH TNG DIV 401ST CA Co	LTC Robert G. Beachman	716-724-4219

ACADEMIC DIVISION	DATE	TIME	CITY	STATE	BLDG. OR TNG CENTER	UNITS OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
Crim	27-28Feb	1900-23	New York, NY		Patterson USAR Center	301ST LOG SPT BDE 77 TH ARCOM 353D CA AREA A 356TH CA AREA B 411TH ENG BDE 42D IN DIV(NG) STATE AG	COL Morton Levinson	212-947-0941
	2 Mar	0800-15	Albany, NY		Public Security Bldg.		LTC Carson H. Leonard	518-457-6870
Proc	25-26Feb	1900-23	Columbus, OH		Army Reserve Center	STATE AG 83D ARMY RESERVE CMD 16TH ENG BDE 100TH TNG DIV STATE AG	1LT Richard A. Lavinsky	614-228-5711
	27-28Feb 2 Mar	1900-23 0800-15	Louisville, KY Lexington, KY		COL E.E. Major USARC USAR Center		MAJ Kenneth Kallbreier LTC Edward Fossett	502-587-8891 502-564-3630
Civil (Claims)	4-5 Mar	1900-23	Cleveland, OH		MOTE USAR Center	86TH ARCOM 416TH ENG CMD 85TH TNG DIV 308TH CA GP 363D CA Co 425TH TRANS BDE	MAJ Robert E. Glaser	216-696-1144
	6-7 Mar	1900-23	Chicago, Ill		Cornell USAR Center		CPT Allan B. Miller	312-282-6200
ICL	9 Mar	0800-15	Cincinnati, OH		Outcalt USAR TNG Center		LTC Jacquelsen A. Jenneween	513-421-4420
	6-7Mar	1900-23	Topeka, KS		Menninger USAR CENTER	69TH SEP IN BDE(NG) STATE AG 102D ARCOM 35TH ENG BDE (NG) 307TH CA GP HQ 3D TRANS BDE(RAILWAY)	MAJ Donald S. Simons	913-235-9257
Civil (LegAst)	9 Mar	0800-15	St Louis, Mo.		Training Center # 1		CPT Robert E. Ritter	314-241-5620
	11-12Mar 13-14Mar	1900-23 1900-23	Madison, WI Detroit, Mich		Madison AFR Armory Raymond Zussinson USARC	STATE AG 70TH TNG DIV 300TH MP POW COMMAND 309TH CA GP 84TH TNG DIV 32D SEP IN BDE (NG) 432D CA Co	MAJ Richard Kabaker LTC Cay Newhouse, Jr.	608-262-2441 313-264-2475
Crim	16 Mar	0800-15	Milwaukee, Wisc		536 W. Silver Spring Drive		LTC James W. Moll	414-762-7000
	11-12Mar 13-14Mar	1900-2300 1900-2300	Harrisburg, PA Pittsburgh, PA		Bldg #442, New Cumberland Army Depot Gen Malcom Hay Armory	STATE AG 28TH IN DIV(NG) 99TH ARCOM 443D FIELD DEPOT 304TH CA AREA B 358TH CA AREA B 416TH CA Co 404TH CA Co STATE AG FOR N 79th ARCOM	LTC Harvey S. Leedom CPT James A. Lynn	717-782-6310 412-434-3709
Civil (LegAst)	16 Mar	0800-1500	Philadelphia, PA		Philadelphia Mem AFRC		CPT Joseph S. Berarducci	215-568-7666
	18-19Mar 20-21Mar	1900-23 1900-23	Albany, NY Edison, NJ		Public Security Bldg. Reserve Center	STATE AG 78TH TNG DIV 50TH ARMORED DIV(NG) 303D CA Co	LTC Carson H. Leonard LTC J. Leonard Horstein	518-457-6870 201-656-2838

ACADEMIC DIVISION	DATE	TIME	CITY	STATE	BLDG. OR TNG CENTER	UNITS OTHER THAN JAGSO	ACTION OFFICER	BUSINESS TELE.
Civil	23 Mar	0800-15	New York, NY		Patterson USAR Center	301ST LOG SPT BDE 77TH ARCOM 353D CA AREA A 356TH CA AREA B 411TH ENG BDE 42D IN DIV(NG)	COL Morton Levinson	212-947-0941
Proc	18-19Mar	1900-23	Dallas, TX		Muchert Reserve Center	36TH SEP IN BDE 362D CA AREA B 490TH CA Co 4013 USAG 90TH ARCOM 321ST CA GP 72D SEP IN BDE (NG)	MAJ Virgil A. Lowrie	817-387-3831
	20-21Mar	1900-23	San Antonio, TX		2010 Harry Wurzbach USARC	75TH MANEUVER AREA CMD	MAJ Richard G. Weil	512-735-9261
	23 Mar	0800-15	Houston, TX		Annex Bldg.		MAJ Donald M. Bishop	713-224-9811
Crim	18-19Mar	1900-23	Providence, RI		Cooper USAR Center	STATE AG 443D CA Co 94TH ARCOM 187TH IN BDE 357TH CA AREA B 1169TH USA OUTPORT 26TH IN DIV (NG)	CPT Gerald Cobleigh	401-277-2154
	20-21Mar	1900-23	Boston, MA		Boston USAR Center	STATE AG 220TH MP BDE 310TH FASCOM 97TH ARCOM NG HQ STATE AG FOR MD	MAJ Peter F. MacDonald	617-727-2257
	23 Mar	0800-15	Washington, D.C.		Ft. G. Meade, Theater #3		MAJ Russel M. King, Jr.	703-525-9400
Civil (LegAst)	25-26Mar	1900-23	Denver, CO		I-332 Fitzsimmons Gen Hosp	STATE AG 68TH ARCOM 205TH IN BDE 205TH SPT BN CO A (ADMIN) 47TH IN DIV (NG)	LTC Bernard Thorn	303-244-3357
	27-28Mar	1900-23	Minneapolis, MN		Bldg. 501, Ft Snelling	STATE AG 407TH CA Co STATE AG 103D SPT BDE	MAJ Jerry C. Klas	612-377-5511
	30 Mar	0800-15	Des Moines, IA		Bldg. 59, Ft Des Moines		LTC Walter McManus	515-282-8171
Proc	25-26Mar	1900-23	Memphis, TN		Marine Hospital	121ST ARCOM 87TH MANEUVER AREA COMMAND 167TH SPT BDE (NG)	MAJ Robert G. Drewry	901-526-0542
	27-28Mar	1900-23	Birmingham, AL		142 W. Valley Ave.	STATE AG 405TH CA GP	COL Lee Lloyd	205-328-5120
	30 Mar	0800-15	Spartanburg, SC		USAR Training Center		LTC H. Hugh Rogers	803-359-2599

Personnel Section

From: PP&TO

1. RETIREMENTS: On behalf of the Corps, we offer our best wishes to the future to the following officers who retired after many years of faithful service to our country.

COL Daniel T. Ghent 30 September 1973 COL James E. Simon 30 September 1973

2. ORDERS REQUESTED AS INDICATED:

NAME	FROM	TO
COLONELS		
TASKER, Clayton B.	Army Cncl Rv Bd	OTJAG
LIEUTENANT COLONELS		
MAY, Ralph J., Jr.	Stu Det, Ft Sam Houston	USA Leg Svc Agy, Falls Church
WHITTEN, William M., III	USA Aviations Sys Comd	OTJAG
CAPTAINS		
APGAR, Robert F.	USATCI, Ft Dix	Korea
BARRY, Bruce C.	DIA, Wash, DC	OTJAG
CARTE, Gene, Jr.	Korea	USAG Pres of SF, CA
CAULKING, John E.	Hq, USAG, Ft Bragg, NC	Korea
COSTELLO, Raymond K.	USATC Ft Campbell, KY	31st Air Def, Homestead, AFB
CRANMER, Sheridan M.	Hq III Corps, Ft Hood, TX	USATCI, Ft Ord, CA
CRARY, Peter B.	Hq 82d Abn Div, Ft Bragg, NC	Korea
ERCK, John R.	USAREUR	USA Leg Svc Agy, Falls Church
HARROLD, Dennis E.	USAG, White Sands, NM	Korea
HART, John M., Jr.	Korea	USAG Pres of SF, CA
HOSKINS, Harry	USA Elect Comd, Ft Monmouth	Korea
LANE, Thomas C.	USATCI, Ft Ord, CA	USA Avn Ctr, Ft Rucker, AL
MORGAN, Jack H.	Flt Tng Ctr, Ft Stewart	Korea
MULLIN, Philip E.	USA Avn Sys Comd St Louis	Korea
OTT, Robert M.	HQCOM, Ft Leonard Wood, MO	Stu Det, Ft Sam Houston
RETSON, Nicholas P.	Hq, USAG Ft Bragg, NC	Korea
REYNOLDS, George D.	USATCI, Ft Dix, NJ	Korea
RICKHOFF, Thomas E.	USAG, Ft Sam Houston, TX	Med Hlt Svc, Ft Sam Houston
STEPHENSON, David	Hq, USAG Ft Sam Houston	Hq 5th USA Ft Sam Houston
STOHNER, George A.	Korea	OTJAG
SULSER, Floyd M.	USA Trns Ctr Ft Eustis	USA Sch Tng Ctr, Ft McClellan
WALCZAK, Alexander	Sch Hel Pilot Ft Wolters	USAG Ft Riley, KS

3. AWARDS: Congratulations to the following officers who received awards as indicated:

LTC Wallace C. Taliaferro	Meritorious Service Medal 30 Jun 71 - 31 Aug 73
MAJ William O. Gentry	Meritorious Service Medal Apr 70 - Jul 73
MAJ James H. Hopper	Meritorious Service Medal 30 Jun 69 - 5 Jun 72
CPT Ralph E. Bawden	Army Commendation Medal 5 Nov 71 - 1 Jun 73
CAPT Mack W. Borgen	Army Commendation Medal 5 Nov 72 - 18 Jul 73
CPT Clifford D. Brooks	Army Commendation Medal 1 Oct 70 - 8 Sep 73

CPT Glen A. Glass
 CPT John H. Jones, Jr.
 CPT Dennis K. Kuroishi
 CPT Joseph R. Rivest
 CPT Joseph J. Sano
 CPT Stephen V. Sickel
 CPT Kenneth F. Sills
 CPT Stan L. Spangler
 CPT Charles J. Swayze
 CPT Murray M. Van Lear, II
 CPT Robert G. Walker
 CPT Thomas G. Wallace
 CPT Thomas E. Workman

Army Commendation Medal 20 Dec 71 - 16 Jan 73
 Army Commendation Medal 5 Nov 71 - 21 Aug 73
 Army Commendation Medal 1 Jul 69 - 1 Apr 73
 Army Commendation Medal 26 Jan 71 - 26 Jul 73
 Army Commendation Medal 1 May 72 - 28 Sep 73
 Army Commendation Medal Jul 71 - May 73 (Second Oak Leaf Cluster)
 Army Commendation Medal Aug 69 - Jun 73 (First Oak Leaf Cluster)
 Army Commendation Medal 1 Nov 70 - 1 Sep 73
 Army Commendation Medal 30 Aug 69 - 12 Apr 73
 Army Commendation Medal 1 Mar 72 - 8 Mar 73
 Army Commendation Medal 25 Jan 71 - 15 Jul 73 (Second Oak Leaf Cluster)
 Army Commendation Medal 21 Aug 71 - 31 Aug 73
 Army Commendation Medal 3 Apr 70 - 27 Oct 73

4. Help Wanted

a. There will be a limited number of positions in the rank of major and captain on the Staff and Faculty, West Point in the Summer of 1974. Captains must have sufficient service remaining to complete two academic years at West Point and at least two years active duty as a judge advocate. All interested applicants are urged to contact PP&TO.

b. Civilian Attorney Vacancy

Position: Attorney - Advisor, 905 - 11 - 13 (starting grade dependent upon qualifications) Military Law/Legal Services Division.

Location: Office of the Chief Counsel
 U.S. Army Aviation Systems Command
 St. Louis, Missouri 63166

5. Improper Release of FBI Reports

Reports submitted to DA by other Government agencies, particularly the FBI, are loaned to DA and remain the property of the lending agency. Pursuant to an agreement between the FBI and DA, investigative reports of the FBI, either as separate documents or included in an Army investigative file, are not to be released to unauthorized persons. FBI reports will not be reproduced or released outside DoD without prior express approval of HQ, DA. Except in cases of boards of officers convened pursuant to AR 604-10, where specified authority is granted by the FBI for release, FBI reports will not be used as evidence in administrative investigations or boards without prior express approval of HQ, DA.

6. MCM Binders. Anyone desiring a permanent binder for the *Manual for Courts-Martial* may contact MAJ James A. Badami, Assistant Executive, OTJAG. MAJ Badami

will gladly furnish as many binders as needed. No MCM inserts are available for distribution, however.

7. Press Release on Excess Leave Program. In order to spread the word about The Judge Advocate General's Corps Excess Leave Program, PP&TO offers this item for release through installation newspapers or education center announcements. Selection boards are scheduled to convene in January and February 1974.

"Regular Army and Reserve company grade officers on active duty who have completed not more than 7 years' commissioned federal service and hold a baccalaureate degree are eligible to participate in the Judge Advocate General's Excess Leave Program. Length of service and limitations can be waived in exceptional cases. Distinguished military graduates of ROTC are also eligible.

"The program permits selected officers to enter on an excess leave status for 3 1/2 years to attend law school. Time spent on excess leave counts for retirement, longevity for pay, time in grade for promotion, medical coverage, commissary and exchange privileges and other benefits. While attending school, participants receive no pay and allowances and must pay their own tuition costs.

"During school vacations, participants perform on-the-job training at local judge advocate offices. During such periods, they receive full pay and allowances.

"Details concerning the program are contained in AR 601-114, 22 Nov 1972."

8. Registration of Illinois Attorneys Now Required.

Effective February 1, 1973, registration of all attorneys licensed in Illinois is required by Rule of the Illinois Supreme Court, regardless of whether they reside, practice or work in or out of Illinois. Attorneys so licensed who have not received such notice are asked to write to Carl H. Rolewick, Administrator, Springfield, Illinois 62704, for registration materials. No fee is charged for those who neither reside, practice or are employed in Illinois.

9. New Training Circular on Augmentation Training for Legal Clerks. Personnel receiving graduates from the Legal Clerk Course at Fort Benjamin Harrison, Indiana should take note of a useful new publication concerning the 71D MOS. The publication is Training Circular 12-71D, Augmentation Training for Legal Clerk MOS 71D20. The TC specifically spells out the tasks selected for the legal clerk at the special court-martial jurisdiction. In the past, problems may have arisen in determining exactly what the school-trained legal clerk has and has not been trained for. The new circular lists every subject taught and how many hours of classroom time were spent on the various subjects in the legal clerk course. Also discussed are the tasks selected for on-the-job training, referenced to provide a guide for training in the field. Thus the circular will identify what the legal clerks studies in the course and what they should be taught in the field. The publication is available through pinpoint distribution channels.

10. Stenotype Court Reporter Training at Civilian Institutions. An initial input of five students (male or female, PMOS/SMOS 71D or 71E) is contemplated for enrollment in the proposed DA fully funded stenotype court reporter training program to be conducted at CONUS civilian court reporting schools under the provisions of Chapter 5, AR 62-1 (See item in the August 1973 issue of *The Army Lawyer*). Training is tentatively scheduled to commence on or about 1 January 1974 at a number of National Shorthand Reporters Association approved schools (see listing below) who have agreed to provide U.S. Army personnel with an uninterrupted 12-month course of study, with maximum concentration on the development of proficiency on the stenotype/stenograph machine from basic theory to court reporting competency (175-200 words per minute) with attendant typewriting-transcription skill. Personnel selected for attendance will incur a service obligation of three months for each month of schooling, with a minimum of 36 months on active duty as a stenotype court reporter. Students will be entitled to be reimbursed up to a maxi-

mum of \$100 for expenses (in addition to tuition) incurred as a result of this training (paragraph 10-2, Chapter 10, AR 621-1).

DA staffing is moving rapidly to authorize implementation of this program, and it is expected that a formal announcement describing qualifying criteria will be made by DA message in the near future, with amplification by OTAG letter.

The *proposed* requirements for qualifying attendance are:

a. Applicants must meet eligibility criteria set forth in paragraph 5-2, Chapter 5, AR 621-1. However, the requirement that an applicant take a College Level Examination program (CLEP) test is being waived.

b. Applicants must have a minimum typing speed of 40 words per minute.

c. Applicants must be individually screened and assessed by a senior JAGC officer as to their motivation and potential as a stenotype court reporter in accordance with standards to be prescribed by TJAGO.

d. Applicants should have an enriched educational background and a qualitative experience record that will contribute to the successful completion of the course.

Applications will be submitted in accordance with paragraph 5-3, Chapter 5, AR 621-1. Item 14, DA Form 2086-R, 1 Aug 72, "Course Area of Specialization," will indicate "Stenotype Court Reporting" as the desired course. Applicants will indicate a first and second choice of the civilian stenotype court reporting school with a respective location that they wish to attend. Item 15, "Remarks," in addition to indicating applicant's typing speed expressed in words per minute, will reflect a brief narrative description of applicant's present duties as well as a brief history of his previous assignment in a JA or legal office.

The following NSRA-approved stenotype court reporting schools have agreed to participate in this program. Enrollment will be made *only* in these schools.

ARIZONA

Legal Arts of Arizona
Suite K, Luhrs Central Building
Phoenix, Arizona 85003

CALIFORNIA

Academy of Stenographic Arts
Publishers Square
2450 17th St. at Potrero
San Francisco, Calif. 94110
Bryan Schools
2511 Beverly Blvd.
Los Angeles, Calif. 90057
Merit College of Court Reporting
(Formerly Gumpert Stenotype)
12431 Oxnard Street
North Hollywood, Calif. 91606
Stenotype School of Long Beach
5228 Orange Avenue
Long Beach, Calif. 90505
San Diego College of Business
1630 A Street
San Diego, Calif. 92101

COLORADO

Mile Hi Reporting School
6301 W. 44th Ave.
Wheat Ridge, Colo. 80033

CONNECTICUT

Connecticut Business Institute
1188 Main Street
Bridgeport, Conn. 06603
Connecticut Stenographic Institute
Courthouse Building
177 Columbus Boulevard
New Britain, Conn. 06051

DISTRICT OF COLUMBIA

Temple School
710-14th Street N.W.
Washington, D.C. 20005
Strayer College
601 Thirteenth Street N.W.
Washington, D. C. 20005

FLORIDA

Business University of Tampa
203½ Franklin St.
Tampa, Florida 33602
Charron-Williams Commercial College
2 N.W. Second Street
Miami, Fla. 33132

Jacksonville School of Court Reporting
30 W. Adams St.
Jacksonville, Fla. 32202
Stenotype Institute of Jacksonville
500 9th Ave. No.
Jacksonville Beach, Fla. 32250

HAWAII

Cannon's College of Commerce
33 South King Street
Honolulu, Hawaii 96813

ILLINOIS

Chicago College of Commerce
27 East Monroe Street
Chicago, Ill. 60603

KANSAS

Clark School of Business
633 Kansas Avenue
Topeka, Kans. 66603

MICHIGAN

Elsa Cooper School of Stenotype
1442 Griswold Street
Detroit, Mich. 48226
Ferris State College
Big Rapids, Mich. 49307
Lansing Community College
419 North Capitol Avenue
Lansing, Michigan 48914

MINNESOTA

Minnesota School of Business
24 South 7th Street
Minneapolis, Minn. 55402
Northern Technical School of Business
1111 Nicollet Avenue
Minneapolis, Minn. 55403

MISSOURI

Kansas City Business College
1415 McGee
Kansas City, Mo. 64106

NEW JERSEY

Essex College of Business
790 Broad Street
Newark, N.J. 07102

NEW YORK

Adelphi Business Schools
47 Mineola Boulevard
Mineola, L.I., N.Y. 11501
1712 Kings Highway
Brooklyn, N.Y. 11229

Interboro Institute
229 Park Avenue South
New York, N.Y. 10003

Merchants & Bankers Business and Secretarial School.

Estey Schools, Inc.
41 East 42nd Street
New York, N.Y. 10017

Roney Stenographic Studio
50 Taft Ave.
Lancaster, N.Y. 14086

Spencer Business School
404 Union Street
Schenectady, N.Y. 12305

State University of New York
Agricultural & Technical College
Alfred, New York 14802

Stenotype Institute of New York
1780 Broadway
New York, New York 10019

RHODE ISLAND

Johnson & Wales Junior College of Business
Abbott Park Place
Providence, R.I. 02903

SOUTH DAKOTA

Stenotype Institute of South Dakota
2009 South Minnesota Avenue
Sioux Falls, S. Dak. 57105

TEXAS

Chapman Court Reporting College
7626 White Settlement Road
Fort Worth, Texas 76108

McMahon College
2601 Main St.
Houston, Texas 77002

Southwest Business College
Veigel Building
Plainview, Texas 79072

Stenograph Institute of Texas
104 Pine Street
Abilene, Texas 79601

WASHINGTON

Auerswald's Business University
1524 Fifth Avenue
Seattle, Wash. 98101

WISCONSIN

Gateway Technical Institute
3520-30th Avenue
Kenosha, Wisc. 53140
Spencerian College of Business
3434 W. Kilbourn Avenue
Milwaukee, Wisconsin 53208

Interested applicants are advised at this time to secure DA Form 2086-R, 1 Aug 72, "Application for Detail as a Student in the Army Enlisted Training Program in Civilian Educational Institutions," and gather necessary substantiating documents such as high school and college transcripts, extracts from military records, etc. in order that their applications may be timely submitted upon formal announcement of the opening of the program. Staff Judge Advocates and senior JAGC officers are requested to keep interested personnel informed as to the full particulars of this program. Applications and inquiries to PP&TO, OTJAG, should be withheld pending the official announcement of the commencement of the program.

11. Advisor Committee Appointees. The following officers have been appointed to Advisory Committees to The Judge Advocate General:

Personnel Policies

CPT Fitzhugh L. Godwin, OTJAG
CPT Frederick N. Smalkin, OTJAG
CPT Stephen K. Todd, OTJAG

Professional Associations

CPT Joseph P. Kulik, OTJAG
CPT Steven D. Needle, OTJAG
CPT David A. Schlueter, USALSA

Continuing Legal Education

CPT John C. Golden, USALSA
CPT Robert B. Kurzweil, USALSA
CPT James R. Rupp, OTJAG

Professional Recognition

CPT Joseph W. Casper, OTJAG
CPT Terry A. Stepp, USALSA
CPT Gilbert J. Weller, USALSA

Professional Writing

CPT Jeffrey H. Smith, OTJAG
CPT Timothy M. White, OTJAG
CPT John T. Willis, USALSA

Professional Books & Equipment

CPT Maurice J. O'Brien, USALSA
CPT Anthony J. Siano, USALSA
CPT Alvin L. Thomas, OTJAG

Current Materials of Interest**Articles**

Note, "Legal Rights of the Suspected Military Drug User," 25 Stanford L. Rev. 740 (1973). Presents an argument for incorporating the constitutional safeguards of civil commitment programs into a preferable in-service retention program for drug abusers.

Haeussler, "Missing in Action," 36 Texas B.J. 797 (1973). Outlines procedures in securing benefits for dependents and settling the state of a deceased POW/MIA.

Note, "Pinocchio's New Nose," 48 N.Y.U.L. Rev. 339 (1973). An evidentiary analysis of polygraph results with suggested minimum standards for their admissibility.

"The Government Client and Confidentiality: Opinion 73-1," 32 Fed. B.J. 71 (1973). A topical opinion by the Professional Ethics Committee, Federal Bar Association.

Note, "Informed Consent and the Patient's Right to 'No'," 6 Loyola of Los Angeles L. Rev. 384 (1973).

Bennett, "Drug Addiction and Its Effect on Criminal Responsibility," 9 Wake Forest L. Rev. 179 (1973).

McThenia, "An Examination of the Federal Water Pollution Control Act Amendments of 1972," 30 Wash. & Lee L. Rev. 195 (1973). Summarizes and critiques the 1972 legislation.

Government Pam

"United States Savings Bonds: Legal Aspects," Stock No. 4811-00003, can be obtained from GPO, at state offices of the Savings Bond Division, or from The Coordinator, Banking and Volunteer Activities, U.S. Savings Bond Division, Washington, D.C. 20226.

Compendium

The International Society for Military Law and the Law of War announces publication of a two volume compendium of papers presented at its Fifth International Congress in Dublin. The themes of the 1970 Congress dealt with military obedience in regard to internal criminal laws and the law of war, and the concept of "war" and "combatant" in modern conflicts. Price of the compendium for Society members is: Part 1 (538 pp) - 450 Belgian francs; Part 2 (526 pp) - 375 Belgian francs. Nonmember price is: Part 1 - 600 Belgian francs; Part 2 - 500 Belgian francs. Checks are payable to "Seminaire Droit Penal Militaire et Droit de Guerre" Account Number CCP No. 9410-70. Orders should be mailed to Director M. H. Bosly, Military Law and Law of War Review, Palais de Justice, 1000 Brussels, Belgium.

Course

ALI-ABA Course of Study, "Federal Tax Procedure from Audit through Litigation," Houston, January 24-26; \$225. For more information contact: ALI-ABA Joint Committee on Continuing Legal Education, 4025 Chestnut Street, Philadelphia, Pennsylvania 19104; telephone (215) 387-3000.

Correction Notices

An administrative law opinion digested in the October issue of *The Army Lawyer* may require clarification due to printer error. The final sentence in the digest of DAJA-AL 1973/4503, 29 Aug. 1973, appearing at page 35, should read: "However, *if*, as in this case, the GCM convening authority accepts the conditional request, he is bound by the condition stated therein and cannot direct an undesirable discharge."

Three corrections should be made in the proposed pretrial agreement appearing in the October issue of *The Army Lawyer*: near mid-page of page 25, the next-to-last word in item 3 should be "non-jurisdictional" instead of "non-judicial"; near mid-page of page 26, "for a period of — months/years" should be deleted from the line which begins "— Total forfeitures of all pay and allowances..."; and the next-to-last marginal headnote on page 26 should begin "Not Prosecute greater charge..." rather than "Dismiss greater charge..."

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS
General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS
Major General, United States Army
The Adjutant General

Dear Sir,

I have the honor to acknowledge the receipt of your letter of the 10th inst.

and in reply to inform you that the same has been forwarded to the proper authorities.

I am, Sir, very respectfully,
Your obedient servant,

J. H. [Signature]

[Address]

[City]

[State]

[Country]

[Post Office]

[Post Office]

[Post Office]

[Post Office]

[Post Office]